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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 486

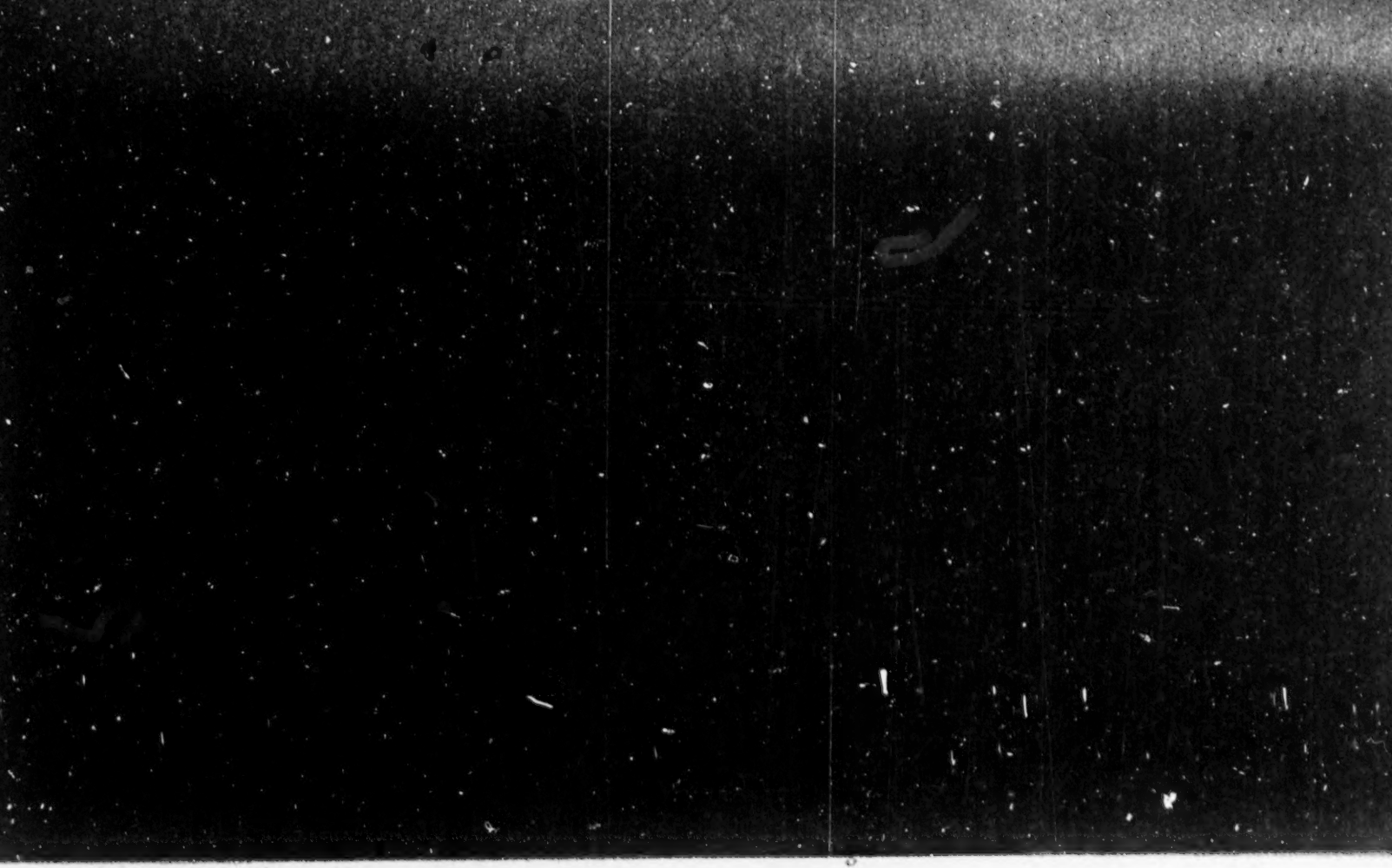
GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

METROPOLITAN EDISON COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI, FILED NOVEMBER 23, 1938
CERTIORARI GRANTED JANUARY 3, 1939



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METROPOLITAN EDISON COMPANY

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1 Before United States Board of Tax Appeals

Docket No. 57869

METROPOLITAN EDISON COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For Petitioner: Francis J. Sweeney, Esq.; for Respondent: C. A. Gwinn, Esq.

(Transferred to Mr. Black 10/23/36.)

Docket entries

May 4, 1931—Petition received and filed. Taxpayer notified. (Fee paid.)
May 5, 1931—Copy of petition served on General Counsel.
June 10, 1931—Answer filed by General Counsel.
June 23, 1931—Copy of answer served on taxpayer—General Calendar.
Jan. 31, 1933—Hearing set 3/6/33.
Feb. 14, 1933—Motion for continuance to the Fall Calendar filed by taxpayer. 2/16/33 granted to 6/6/33.
May 20, 1933—Motion for continuance to Fall Calendar filed by taxpayer. 5/22/33 granted.
2 Aug. 25, 1934—Hearing set Oct. 22, 1934.
Oct. 22, 1934—Hearing had before Mr. Smith, Division 5, on merits. Stipulation of facts and exhibits filed. Supplemental stipulation to be filed on 12/22/34. Petitioner's brief due Dec. 22, 1934, Commissioner's brief Jan. 22, 1935, petitioner's reply brief Feb. 6, 1935.
Oct. 31, 1934—Transcript of hearing Oct. 22, 1934, filed.
Dec. 7, 1934—Supplemental stipulation of facts filed.
Dec. 20, 1934—Brief filed by taxpayer. 12/20/34 brief served on General Counsel.
Jan. 18, 1935—Motion for extension to 2/2/35 to file brief filed by General Counsel. 1/21/35 granted—petitioner's reply due 2/18/35.
Feb. 2, 1935—Brief filed by General Counsel.
Feb. 16, 1935—Reply brief filed by taxpayer. 2/16/35 copy served.
May 14, 1937—Findings of fact and opinion rendered—Mr. Black, Division 15. Decision will be entered under Rule 50.
June 16, 1937—Motion for order of redetermination filed by General Counsel.
June 17, 1937 —Hearing set July 7, 1937, on settlement.
June 30, 1937—Motion for order of redetermination filed by taxpayer 7/1/37 copy served.

3 June 30, 1937—Motion to substitute the attached amended recomputation in lieu of the recomputation submitted on June 16, 1937, filed by General Counsel. 7/2/37 granted.
July 2, 1937—Decision entered—Mr. Black, Division 15.
Sept. 17, 1937—Motion to fix amount of bond filed by taxpayer. 9/17/37 bond ordered fixed at $168,000.00.
Sept. 29, 1937—Supersedeas bond in the amount of $168,000.00 approved and ordered filed.
Sept. 29, 1937—Petition for review by U. S. Circuit Court of Appeals, 3rd Circuit, with assignments of error filed by taxpayer.
Sept. 29, 1937—Proof of service filed by taxpayer.
Sept. 29, 1937—Praecipe with proof of service thereon filed.

4 Before United States Board of Tax Appeals

Docket No. 57869

METROPOLITAN EDISON COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Petition

Filed May 4, 1931

Metropolitan Edison Company hereby petitions for a redetermination of an asserted deficiency and alleges as follows:

I. The Commissioner of Internal Revenue, the respondent herein, by letter dated March 11, 1931, and bearing the bureau reference or symbols IT:AR:B-8-TMM-60D notified your petitioner by registered mail, of deficiency in income taxes with respect to the income tax imposed by the Revenue Acts of 1926 and 1928.

II. Your petitioner was, at all times hereinafter mentioned, a corporation duly organized and existing under the laws of the State of Pennsylvania and was engaged in the business of generation and sale of electrical energy.

III. Upon information and belief the notice of deficiency, a copy of which is attached hereto, made a part hereof as though here set forth in full and marked Exhibit A, was mailed to your petitioner on March 11, 1931.

IV. The taxes in controversy are as follows:

For the fiscal period beginning January 1, 1927, and ending
5 December 31, 1927, $249,422.80, and for the fiscal period beginning January 1, 1928, and ending December 31, 1928, $407,285.21.

V. The respondent's determination of income taxes set forth in said deficiency letter is based upon the following errors:

A. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal periods by adding to or failing to deduct from the taxable net incomes of its affiliated taxpayers, the following items:

Item	Name of affiliated taxpayer	Year and description of item		
1	Hanover & McSherrystown Street Railway Company	1927	Depreciation	$8,264.11
2	Pennsylvania Edison Company	1927	Loss on property retired	92,517.85
3	Pennsylvania Edison Company	1927	Fire loss Bangor Plant	101,800.61
4	Pennsylvania Edison Company	1927	Depreciation	294,732.75
5	Maryland Public Service Co	1927	Depreciation	350.00
6	Saylorsburg Light & Power Co	1927	Depreciation	818.24
7	Easton Gas Works	1927	Depreciation	12,134.64
8	Easton Gas Works	1927	Loss on property retired	9,119.34
9	Interurban Gas Company	1927	Depreciation	1,009.02
10	Metropolitan Power Company	1927	Depreciation	13,452.76
11	The Pen Argyl Gas Company	1927	Depreciation	1,010.77
12	Easton Gas Works	1928	Depreciation	9,280.20
13	Interurban Gas Company	1928	Depreciation	972.93
14	Hanover & McSherrystown Street Railway Company	1928	Depreciation	4,127.47
15	The Maryland Public Service Company	1928	Depreciation	57.69
16	Hamburg Gas & Electric Co	1928	Depreciation	2,807.45
17	Topton Electric Light & Power Company	1928	Depreciation	854.38
18	Weisenberg Township Electric Light & Power Company	1928	Depreciation	174.66
19	Birdsboro Electric Company	1928	Depreciation	375.82
20	Boyertown Electric Company	1928	Depreciation	2,227.85
21	Annville & Palmyra Electric Light Company	1928	Depreciation	1,585.22
22	Bernville Light, Heat & Power Company	1928	Depreciation	360.55
23	Berks-Lehigh Electric Company	1928	Depreciation	541.11
24	Blue Mountain Electric Company	1928	Depreciation	2,371.30
25	Pennsylvania Edison Company	1928	Depreciation	54,640.61
26	Pennsylvania Edison Company	Loss on property retired—1928		1,347.29

6 B. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding thereto or failing to deduct therefrom as follows:

	Year	Amount
1. Amortization	1927	$551,742.90
2. Loss on property retired	1927	230,728.32
3. Depreciation	1927	530,895.01
4. Depreciation	1928	814,176.18
5. Amortization	1928	2,455,855.85
6. Loss on property retired	1928	75,338.80

C. That the respondent has erroneously and illegally annulled, modified, set aside and/or disregarded a final agreement between the respondent and your petitioner and its affiliated taxpayers fixing the amount of Federal income tax liability of your petitioner and/or its affiliated taxpayers for the calendar year 1927 and/or parts thereof and that the determination of the respondent contained in Exhibit A is without authority and contrary to the law and regulations made and provided.

D. That the respondent erroneously and illegally annulled, modified, set aside, and/or disregarded a final agreement between the respondent and your petitioner and its affiliated taxpayers for the calendar year 1928 and/or parts thereof and that the determination of

the respondent contained in Exhibit "A" is without authority and contrary to the law and regulations made and provided.

E. That the respondent erroneously and illegally increased your petitioner's income tax liability for the calendar year 1928 by failing to allow credit to your petitioner and/or its affiliated taxpayers for income taxes assessed and paid for said period in the amount of $370.33.

VI. Facts upon which your petitioner relies as sustaining the aforesaid assignments of error are as follows:

A. Affiliated taxpayers—Facts as to erroneous and illegal increases in taxable net incomes of affiliated taxpayers by the respondent:

1. Hanover & McSherrystown Street Railway Company—That the depreciable assets of said Hanover & McSherrystown Street Railway Company for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $8,264.11 as a fair and reasonable allowance for depreciation.

2. Pennsylvania Edison Company—That during the calendar year 1927 said Pennsylvania Edison Company sold miscellaneous capital assets and sustained a loss of $92,517.85 on said sale. The respondent failed to allow said loss as a deduction from income in determining taxable net income for the calendar year 1927.

3. Pennsylvania Edison Company—That during the calendar year 1927 said Pennsylvania Edison Company sustained a loss of $101,800.61 by reason of a fire at its Bangor power plant. The respondent failed to allow said loss as a deduction from income in determining taxable net income for 1927.

4. Pennsylvania Edison Company—That the depreciable assets of said Pennsylvania Edison Company for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $294,732.75 as a fair and reasonable additional allowance for depreciation.

5. Maryland Public Service Company—That the depreciable assets of said Maryland Public Service Company for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $350.00 as a fair and reasonable allowance for depreciation.

6. Saylorsburg Light & Power Company—That the depreciable assets of said Saylorsburg Light & Power Company for the period beginning August 1, 1927, and ending November 30, 1927, was a sum certain, sufficient to constitute the amount of $818.24 as a fair and reasonable allowance for depreciation.

7. Easton Gas Works—That the depreciable assets of said Easton Gas Works for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $12,134.64 as a fair and reasonable additional allowance for depreciation.

8. Easton Gas Works—That during the calendar year 1927 said Easton Gas Works sold miscellaneous capital assets and sustained a loss of $9,119.34 on said sale. The respondent failed to allow said

loss as a deduction from income in determining taxable net income for the calendar year 1927.

9. Interurban Gas Company—That the depreciable assets of said Interurban Gas Company for the calendar year 1927 was a sum
9 certain, sufficient to constitute the amount of $1,009.02 as a fair and reasonable allowance for depreciation.

10. Metropolitan Power Company—That the depreciable assets of said Metropolitan Power Company for the period beginning January 1, 1927, and ending March 31, 1927, was a sum certain, sufficient to constitute the amount of $13,452.76 as a fair and reasonable additional allowance for depreciation.

11. The Pen Argyl Gas Company—That the depreciable assets of said The Pen Argyl Gas Company for the period beginning August 1, 1927, and ending November 30, 1927, was a sum certain, sufficient to constitute the amount of $1,010.77 as a fair and reasonable allowance for depreciation.

12. Easton Gas Works—That the depreciable assets of said Easton Gas Works for the calendar year 1928 was a sum certain, sufficient to constitute the amount of $9,280.20 as a fair and reasonable additional allowance for depreciation.

13. Interurban Gas Company—That the depreciable assets of said Interurban Gas Company for the calendar year 1928 was a sum certain, sufficient to constitute the amount of $972.93 as a fair and reasonable additional allowance for depreciation.

14. Hanover & McSherrystown Street Railway Company—That the depreciable assets of said Hanover & McSherrystown Street Railway Company for the calendar year 1928 was a sum certain,
10 sufficient to constitute the amount of $4,127.47 as a fair and reasonable additional allowance for depreciation.

15. The Maryland Public Service Company—That the depreciable assets of said The Maryland Public Service Company for the calendar year 1928 was a sum certain, sufficient to constitute the amount of $57.69 as a fair and reasonable additional allowance for depreciation.

16. Hamburg Gas and Electric Company—That the depreciable assets of said Hamburg Gas and Electric Company for the period beginning April 1, 1928, and ending July 1, 1928, was a sum certain, sufficient to constitute the amount of $2,897.45 as a fair and reasonable additional allowance for depreciation.

17. Topton Electric Light and Power Company—That the depreciable assets of said Topton Electric Light and Power Company for the period beginning April 1, 1928, and ending July 1, 1928, was a sum certain, sufficient to constitute the amount of $854.38 as a fair and reasonable additional allowance for depreciation.

18. Weisenberg Township Electric Light, Heat, and Power Company—That the depreciable assets of said Weisenberg Township Electric Light, Heat, and Power Company for the period beginning April 1, 1928, and ending July 1, 1928, was a sum certain, sufficient to constitute the amount of $174.66 as a fair and reasonable additional allowance for depreciation.

19. Birdsboro Electric Company—That the depreciable assets of said Birdsboro Electric Company for the period beginning April 1, 1928, to July 1, 1928, was a sum certain, sufficient to constitute
11 the amount of $375.82 as a fair and reasonable additional allowance for depreciation.

20. Boyertown Electric Company—That the depreciable assets of said Boyertown Electric Company for the period beginning April 1, 1928, and ending April 1, 1928, was a sum certain, sufficient to constitute the amount of $2,227.85 as a fair and reasonable additional allowance for depreciation.

21. Annville & Palmyra Electric Light Company—That the depreciable assets of said Annville & Palmyra Electric Light Company for the period beginning April 1, 1928, and ending July 1, 1928, was a sum certain, sufficient to constitute the amount of $1,585.22 as a fair and reasonable allowance for depreciation.

22. Bernville Light, Heat & Power Company—That the depreciable assets of said Bernville Light, Heat & Power Company for the period beginning April 1, 1928, and ending July 1, 1928, was a sum certain, sufficient to constitute the amount of $360.55 as a fair and reasonable allowance for depreciation.

23. Berks-Lehigh Electric Company—That the depreciable assets of said Berks-Lehigh Electric Company for the period beginning April 1, 1928, to July 1, 1928, was a sum certain, sufficient to constitute the amount of $541.11 as a fair and reasonable allowance for depreciation.

24. Blue Mountain Electric Company—That the depreciable assets of said Blue Mountain Electric Company for the period beginning April 1, 1928, and ending July 1, 1928, was a sum certain, suffi-
12 cient to constitute the amount of $2,371.30 as a fair and reasonable allowance for depreciation.

25. Pennsylvania Edison Company—That the depreciable assets of said Pennsylvania Edison Company for the period beginning January 1, 1928, and ending March 1, 1928, was a sum certain, sufficient to constitute the amount of $54,640.61 as a fair and reasonable additional allowance for depreciation.

26. Pennsylvania Edison Company—That during the period beginning January 1, 1928, and ending March 1, 1928, said Pennsylvania Edison Company sold miscellaneous capital assets and sustained a loss of $1,347.29 on said sale. The respondent failed to allow said loss as a deduction from income in determining taxable net income for the calendar year 1928.

B. Petitioner's income—Facts as to erroneous and illegal increases in taxable net income of your petitioner by respondent:

1. The respondent erroneously and illegally increased taxable net income by failing to deduct therefrom premium and unamortized debt discount and expense amounting to $551,742.90; said expense was incurred during the calendar year 1927 by reason of the calling and retiring of a portion of your petitioner's funded debt.

2. That during the calendar year 1927 your petitioner sold miscellaneous capital assets and sustained a loss of $230,728.32 on said sale. The respondent failed to allow said loss as a deduction from income in determining taxable net income for the calendar year 1927.

3. That the depreciable assets of your petitioner for the cal-
13 endar year 1927 was a sum certain, sufficient to constitute the amount of $530,895.01 as a fair and reasonable additional allowance for depreciation.

4. That the depreciable assets of your petitioner for the calendar year 1928 was a sum certain, sufficient to constitute the amount of $814,176.18 as a fair and reasonable additional allowance for depreciation.

5. The respondent erroneously and illegally increased taxable net income by failing to deduct therefrom premium and unamortized debt discount and expense amounting to $2,455,855.85. Said expense was incurred during the calendar year 1928 by reason of the calling and retiring of a portion of your petitioner's funded debt.

6. That during the calendar year 1928 your petitioner sold miscellaneous capital assets and sustained a loss of $75,338.80 on said sale. The respondent failed to allow said loss as a deduction from income in determining taxable net income for the calendar year 1928.

C. Final closing agreement.

1. That on or about December 27, 1929, the respondent prepared and submitted to your petitioner and its affiliated taxpayers a closing agreement fixing the income tax liability of your petitioner and its affiliated taxpayers for the calendar year 1927 and/or parts thereof as more fully appears from said agreement.

2. That on or about December 27, 1929, your petitioner and its affiliated taxpayers executed said agreement and delivered it to J. S. Stackhouse of the office of the Internal Revenue Agent in Charge, Gimbel Building, Philadelphia, Pa.

14 D. Final closing agreement.

1. That on or about April 28, 1930, the respondent prepared and submitted to your petitioner and its affiliated taxpayers a closing agreement fixing the income tax liability of your petitioner and its affiliated taxpayers for the calendar year 1928 and/or parts thereof as more fully appears from said agreement.

2. Thereafter on May 1, 1930, your petitioner and its affiliated taxpayers executed said agreement with stipulation waiving the right to appeal to the United States Board of Tax Appeals and consenting to an immediate assessment of the additional tax of $370.33 shown by said agreement upon condition that said agreement was accepted and approved as required by law.

3. That thereafter and pursuant to said agreement the respondent caused to be levied an additional assessment in accordance with said agreement.

4. On or about May 28, 1930, your petitioner paid said assessment pursuant to the aforesaid agreement.

E. That on or about May 28, 1930, in response to a notice and demand received from Joseph S. MacLaughlin, Collector of Internal Revenue, First District, Pennsylvania, Philadelphia, Pa., your petitioner forwarded him a check in the amount of $397.35 representing $370.33 additional tax for 1928 in accordance with final agreement fixing tax liability executed by your petitioner and its affiliated taxpayers on May 1, 1930, and interest amounting to $27.02.

Wherefore, your petitioner prays that your Honorable Board may hear and determine its petition; that the determination of the
15 respondent contained in said deficiency letter be redetermined, set aside, disallowed, and disapproved by your Honorable Board, granting unto your petitioner a reduction and disallowance of said respondent's deficiencies and refunding or crediting the income tax overpayments and overassessments as follows:

Fiscal period beginning January 1, 1927, and ending December 31, 1927—Overassessment and overpayment $148,027.56.

Fiscal period beginning January 1, 1928, and ending December 31, 1928—Overassessment and overpayment $87,267.57.

To your petitioner and/or its affiliated taxpayers in accordance with agreement between said taxpayers and the law and regulations made and provided, and for such other and further relief as may be just.

All of which is respectfully submitted.

(Signed) FRANCIS J. SWEENEY,
Counsel for the Petitioner,
Post Office Address, Room 2401, 61 Broadway, New York, N. Y.

Dated April 14, 1931.

[*Duly sworn to by J. F. McKenna; jurat omitted in printing.*]

17 *Exhibit A to petition*

NP-2-26-28.

TREASURY DEPARTMENT.
Washington, Mar. 11, 193..

Office of Commissioner of Internal Revenue.

Address Reply to Commissioner of Internal Revenue and Refer to

METROPOLITAN EDISON COMPANY,
412 Washington Street, Reading, Pennsylvania.

SIRS: You are advised that the determination of your tax liability for the years 1927 and 1928 discloses a deficiency of $421,412.88 as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926 and section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability for the years in which a deficiency is disclosed.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your returns by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the
18 interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.
By J. C. WILMER,
Deputy Commissioner.

Enclosures:
Statement.
Form 882.
Form 870.
Schedules 1 to 22, inclusive.

Statement

METROPOLITAN EDISON COMPANY

COMPANIES INCLUDED IN THE CONSOLIDATION

	Returns examined for the years—
Parent (or principal company):	
Metropolitan Edison Company, Reading Pennsylvania	1927 1928
Subsidiary Companies:	
Hanover and McSherrystown Street Railway Company, Reading, Pennsylvania	1927 1928
The Maryland Public Service Company, Reading, Pennsylvania	1927 1928
Pennsylvania Edison Company, Easton, Pennsylvania	1927 Period January 1, 1928 to March 1, 1928
Easton Gas Company, Easton, Pennsylvania	1927 1928
19 Saylorsburgh Light, Heat and Power Company, Easton, Pennsylvania.	1927.
Interurban Gas Company, Easton, Pennsylvania.	1927. 1928.
Pen Argyl Gas Company, Easton, Pennsylvania.	1927.
Central Broadhead Power Company, Easton, Pennsylvania.	1927. 1928.
Monaghan-York Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.
Jackson-York Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.
Cooke-Cumberland Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.
North Cornwall Lebanon Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.

	Washington Berks Electric Company, Reading, Pennsylvania.	1927.
	Hereford Township Electric Company, Reading, Pennsylvania.	1927.
	Dickinson-Cumberland Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.
	Bridgeton-Bucks Light and Power Company, Reading, Pennsylvania.	Period March 11,, 1927, to December 31, 1927.
	Tinicum Township Edison Company, Reading, Pennsylvania.	Period June 22, 1927, to December 31, 1927.
20	Delaware Pike Electric Company, Reading, Pennsylvania.	Period August 17, 1927, to December 31, 1927.
	Spring Grove-York Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.
	Heidleberg-York Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.
	Hamilton-Adams Light and Power Company, Reading, Pennsylvania.	Period January 12, 1927, to December 31, 1927.
	Nockamixon-Bucks Light and Power Company, Reading, Pennsylvania.	Period March 11, 1927, to December 31, 1927.
	Metropolitan Power Company, Reading Pennsylvania.	1927.
	Bernville Light, Heat and Power Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928.
	French Creek Electric Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928.
	Hamburg Gas and Electric Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928.
	Topton Electric Light and Power Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928.
	Weisenberg Township Electric Light and Power Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928.
	Birdsboro Electric Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928.
21	Ortanna Electric Light and Power Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928
	Boyertown Electric Light and Power Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928
	Annville and Palmyra Electric Light Company, Reading Pennsylvania.	Period April 1, 1928, to July 1, 1928
	Berks-Lehigh Electric Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928
	Blue Mountain Electric Company, Reading, Pennsylvania.	Period April 1, 1928, to July 1, 1928

TAX LIABILITY

Year	Tax liability	Tax assessed	Deficiency
1927	$367,744.24	$266,349.00	$101,395.24
1928	406,887.86	86,870.22	320,017.64
Total	$774,632.10	$353,219.22	$421,412.88

Full details of the adjustments producing the above-stated results are contained in the attached schedules 1 to 22, inclusive, and in revenue agent's reports dated September 9, 1929, and March 1, 1930, copies of which have been furnished you, and which are hereby made a part of this letter.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for years 1927 and 1928, the Bureau will be unable to afford you an opportunity under

the provisions of article 1211 of Regulations 69, and/or article
22 451 of Regulations 74 to discuss your case before mailing formal notice of its determination as provided by section 274 (a) of the Revenue Act of 1926 and/or section 272 (a) of the Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

The following claims for refund have been given careful consideration in the determination of the results set forth in this letter and will be made the basis of separate communications addressed to the companies which filed the claims.

Company	Year	Date filed	Amount
Metropolitan Edison Company	1927	February 26, 1930	$54,144.22
Metropolitan Edison Company	1927	February 26, 1930	36,906.58
Pen Argyl Gas Company	1927	February 28, 1930	21.66
Interurban Gas Company	1927	February 26, 1930	182.79
Pennsylvania Edison Company	1927	February 26, 1930	17,477.54
Saylorsburg Light and Power Company	1927	February 26, 1930	11.70

The entire tax liability has been allocated to the Metropolitan Edison Company in accordance with agreements filed under sections 240 and 142 of the Revenue Acts of 1926 and 1928 respectively.

Copies of the attached letter, together with a copy of the statement and schedules have been mailed to your representatives, Miller and Chevalier, Southern Building, Washington, D. C., and H. C. Hobson, 61 Broadway, New York, New York, in accordance with the authority conferred upon them in the powers of attorney executed by you and on file in this office.

The additional depreciation is allowed herein with the specific understanding that same will be recorded permanently in your accounts in accordance with Article 209 of Regulations 74.

23 SCHEDULE 1

METROPOLITAN EDISON COMPANY—YEAR ENDED DECEMBER 31, 1927

NET INCOME

Net income as disclosed by return		$1,558,116.58
As corrected		2,200,333.93
Net adjustment		$642,217.35
Unallowable deductions and additional income:		
(a) Reserve for injuries and damages	$327.80	
(b) Fee paid on capital stock issued	18,768.96	
(c) Premium paid and unamortized discount on bonds retired	551,742.90	
(d) Loss on property retired	230,728.32	
Total		$801,567.98
Nontaxable income and additional deductions:		
(e) Additional depreciation allowed	$159,350.63	
Total		$159,350.63
Net adjustment as above		$642,217.35

SCHEDULE 1-A

EXPLANATION OF ITEMS CHANGED

(a) This amount represents the excess of payments over accruals on account of injuries and damages, and is computed as follows:

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Total payments	$11,919.74
Total accruals	10,800.00
Excess payments deducted on return	$1,119.74
Actual excess of payment	791.94
Adjustment as above	$327.80

(b) Fees paid to state of Pennsylvania on account of the increase of the capital stock of a corporation are capital expenditures and are not deductible in computing net income.

Authority, decision of United States Board of Tax Appeals in the case of Logan-Gregg Hardware Company, Volume 2, page 647.

(c) This amount represents premium paid and unamortized discount on $3,250,000.00, 1st Refunding 6% Gold Bonds, Series A of the Metropolitan Power Company which were redeemed through the issuance on March 1, 1928, of $23,000,000.00 1st Refunding 4½% Gold Bonds, Series D, maturing on March 1, 1968, and is disallowed as a deduction for income tax purposes for the reason that the Bureau holds that where bonds are retired through the proceeds of another issue of bonds sold for the specific purpose of effecting such retirement, the unamortized portion of discount and expense of the previous issue becomes an expense incidental to the issuing of the new bonds and should, therefore, be amortized over the life of the new bonds.

(d) As you have failed to establish the cost or by what means the March 1, 1913, value claimed is determined for the items involved in this amount, and also since the provision for depreciation as set up on your books does not permit the determination of the

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intervening exhaustion on the assets retired, the loss claimed on your return is disallowed as in the absence of such essential data there is no means by which the Bureau can determine any allowable loss.

(e) Depreciation has been revised in accordance with rate acceptable to the Bureau and is computed as follows:

Original Property Account December 31, 1917	$6,361,266.15
Additions, Year 1918	763,131.39
Additions, Year 1919	254,697.41
Additions, Year 1920	936,306.84
Additions, Year 1921	110,600.58
Additions, Year 1922	819,996.10
Additions, Year 1923	3,594,316.81
Additions, Year 1924	1,536,805.49
Additions, Year 1925	1,711,033.42
Additions, Year 1926	8,890,707.48
Total depreciable assets as at December 31, 1926	$24,978,861.67

Depreciation at 2½ per cent		$624,471.54
Additions, year 1927 at 1¼ per cent	$1,723,298.02	21,541.22
Additions, year 1927 at 1¼ per cent for 10 months	5,261,037.92	54,802.48
Additional depreciation allowable		$159,350.63
Depreciation deducted in return		541,464.61
Additional depreciation allowable		$159,350.63

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SCHEDULE 2

PENNSYLVANIA EDISON COMPANY—YEAR ENDED DECEMBER 31, 1927

NET INCOME

Net income as disclosed by return		$352,734.92
As corrected		445,553.43
Net adjustment		$92,818.51
Unallowable deductions and additional income:		
(a) Injuries and damage payment refunded	$40.95	
(b) Loss on property retired	92,517.85	
(c) Fire loss Bangor Plant	101,800.61	
Total		$194,359.41
Nontaxable income and additional deductions:		
(d) Additional depreciation	$101,540.90	
Total		101,540.90
Net adjustment as above		$92,818.51

SCHEDULE 2-A

EXPLANATION OF ITEMS CHANGED

(a) This amount represents an adjustment on account of overpayment of injuries and damages.

(b) For explanation of this adjustment see item (d) schedule 1-A.

(c) For explanation of this adjustment see item (d) schedule 1-A.

(d) Depreciation has been adjusted at rates acceptable to the Bureau as follows:

Original Plant account at December 31, 1915	$6,609,174.59	
Depreciation at 1½%		$99,137.62
27 Additions—years 1916 to 1926	4,288,035.34	
Depreciation at 2½%		107,200.88
Additions, year 1927	491,658.69	
Depreciation at 1¼%		6,145.73
Total depreciation allowable		$212,484.23
Depreciation deducted on return		110,943.33
Additional depreciation allowable		$101,540.90

SCHEDULE 3

EASTON GAS WORKS—YEAR ENDED DECEMBER 31, 1927

NET INCOME

Net income as disclosed by return		$62,773.50
As corrected		77,593.00
Net adjustment		$14,819.50
Unallowable deductions and additional income:		
(a) Depreciation disallowed	$1,968.87	
(b) Prior year loss	3,731.04	
(c) Loss on property retired	9,119.59	
Total		$14,819.50

SCHEDULE 3-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted at rates acceptable to the Bureau as follows:

Total depreciable assets as of December 31, 1912	$1,021,884.93	
Depreciation at 2½%		$25,547.12
Additions, December 31, 1912, to December 31, 1923	177,138.26	
Depreciation at 2½%		4,428.46
Additions, year 1924	261,969.93	
Depreciation at 2½%		3,274.62
Additions, year 1925	168,235.63	
Depreciation at 2½%		4,205.89
Additions, year 1926	115,228.57	
Depreciation at 2½%		2,880.71
Additions, year 1927	215,546.08	
Depreciation at 1¼%		2,694.33
Total depreciation allowable		$43,031.13
Depreciation deducted on return		45,000.00
Depreciation disallowed		$1,968.87

(b) This item represents a portion of loss on sale of property incurred in the year 1920 which you have amortized over a ten-year period.

Since the loss was not incurred during the taxable year no deduction therefore can be allowed. Reference, article 112, Regulations 69.

The computation follows:

Prior year loss deducted	$14,663.04
Amount reported unallowable	10,932.00
Additional amount disallowed	$3,731.04

(c) Same explanation as item (d) schedule 1-A.

SCHEDULE 4

INTERURBAN GAS COMPANY—YEAR ENDED DECEMBER 31, 1927

NET INCOME

Net income as disclosed by return	$4,423.71
As corrected	$4,006.73
Net adjustment	$416.98
Nontaxable income and additional deductions:	
(a) Additional depreciation	$416.98

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SCHEDULE 4-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted at rates acceptable to the Bureau as follows:

Additions 1916 to 1926, inclusive	$15,190.76	
Depreciation at 2½%		$379.77
Additions, year 1927	2,976.47	
Depreciation at 1¼%		37.21
Total depreciation allowable		$416.98
Depreciation deducted on return		None
Additional depreciation allowable		$416.98

SCHEDULE 5

METROPOLITAN POWER COMPANY—YEAR ENDED DECEMBER 31, 1927

NET INCOME

Net loss as disclosed by return	$(23,085.43)
As corrected—loss	(21,447.96)
Net adjustment	$1,637.47
Unallowable deductions and additional income:	
(a) Depreciation disallowed	$1,637.47

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SCHEDULE 5-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted on basis of rates acceptable to the Bureau of follows:

Additions: January 1, 1923, to December 31, 1923	$897,268.12	
Depreciation at 2½%		$22,431.70
Additions, year 1924	2,368,826.24	
Depreciation at 2½%		59,220.66
Additions, year 1925	516,115.95	
Depreciation at 2½%		12,902.90
Additions, year 1926	1,426,208.92	
Depreciation at 2½%		35,655.22
Additions, year 1927	52,618.69	
Depreciation at 1¼%		657.73
Depreciation allowable for year		$130,868.21
¼ths of above applicable for period		$21,811.37
Depreciation deducted on return		23,448.84
Depreciation disallowed		$1,637.47

Depreciation for the period March 1, to December 31, 1927, included in item (e) of schedule 1-A.

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SCHEDULE 6

METROPOLITAN EDISON COMPANY—YEAR ENDED DECEMBER 31, 1927

CONSOLIDATED NET INCOME—NET INCOME AS CORRECTED

Schedule	Company	
1	Metropolitan Edison Company	$2,200,333.93
Return	Hanover and McSherrystown Street Railway Co.	14,364.37
Return	The Maryland Public Service Company	904.39
2	Pennsylvania Edison Company	445,553.42
Return	Saylorsburg Light and Power Company	2,011.72
3	Easton Gas Works	77,593.00
4	Interurban Gas Company	4,008.73
Return	The Pen Argyl Gas Company	711.61
Return	Central Broadhead Power Company	None
Return	Monaghan York Light and Power Company	None
Return	Jackson-York Light and Power Company	None
Return	Cooke-Cumberland Light and Power Company	None
Return	North Cornwall-Lebanon Light and Power Company	None
Return	Washington Berks Electric Company	None
Return	Hereford Township Electric Company	None
Return	Dickinson Cumberland Light and Power Company	None
Return	Bridgeton-Bucks Light and Power Company	None
Return	Tinicum Township Edison Company	None
32 Return	Delaware Pike Electric Company	None
Return	Spring-Grove York Light and Power Company	None
Return	Heidelberg-York Light and Power Company	None
Return	Hamilton-Adams Light and Power Company	None
Return	Neckamixon-Bucks Light and Power Company	None
	Total net income	$2,745,479.38
5	Net Loss as Corrected, Metropolitan Power Company	21,447.96
	Net consolidated income as corrected	$2,724,031.42

SCHEDULE 7

METROPOLITAN EDISON COMPANY

RECONCILIATION OF CONSOLIDATED SURPLUS—YEAR 1927

	Metropolitan Edison Company	Hanover and McSherrystown Street Railway Company	Maryland Public Service	Pennsylvania Edison Company	Saylorsburg Light and Power Company	Easton Gas Works	Interurban Gas Company	Metropolitan Power Company	The Pen Argyl Gas Company	Total
Surplus reported December 31, 1926	$2,692,804.76	$138,831.18	$1,198.62	$375,102.38	$41,031.65	$102,289.24	$5,244.20	($117,239.46)	$11,060.30	$3,250,322.87
Net income as corrected	2,200,333.93	14,364.37	904.59	445,553.43	2,011.72	77,593.00	4,006.73	(21,447.96)	711.61	2,734,031.42
Nontaxable income and additional deductions:										
Dividends	526,498.56			40,940.00						566,438.56
Interest during construction	90,942.51			16,195.79		1,221.76				108,360.06
Stamp taxes	1,670.50			1,102.50						2,773.00
Reserve for injuries and damages	791.94	(1,064.57)		(969.00)						(1,341.63)
Additional depreciation	159,350.63			101,840.90		(1,968.87)	416.98	(1,637.47)		257,702.17
Bond discount				2,516.85						2,516.85
Surplus of Saylorsburg Light and Power Company and Pen Argyl Gas Company				42,698.37		11,771.91				54,470.28
Total	$5,671,392.83	$152,130.98	$2,103.21	$1,024,681.22	$43,043.37	$190,907.04	$9,667.91	($140,324.89)	$11,771.91	$6,965,373.58
Unallowable deductions and additional income:										
Dividends paid	$2,061,796.53			$472,998.56		$40,940.00				$2,575,735.09
Deficit of Metropolitan Power Company	140,802.03									140,802.03
Federal income taxes	325,915.42	$600.00	$120.00	55,..50.00	$345.00	7,750.00				389,980.42
Tax on tax free bonds	16,713.79	4.00		2,100.00				$477.14		19,294.93
Premium on stock of Saylorsburg Light and Power Company and Pen Argyl Gas Company				32,900.00		2,500.00				35,400.00
Injuries and damages refunded				40.95						40.95
Adjustment of 1926 donations						13,220.16	$329.25			13,220.16
Prior year loss						14,663.04				14,992.29
Total	$2,545,227.77	$604.00	$120.00	$563,289.51	$345.00	$79,073.20	$329.25	$477.14	0	$3,189,865.87
Surplus reported December 31, 1927	$3,126,165.06	$151,526.98	$1,983.21	$461,391.71	$42,698.37	$111,833.84	$9,338.66	($140,802.03)	$11,771.91	$3,775,907.71

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SCHEDULE 8

COMPUTATION OF TAX

INCOME TAX

Net income for taxable year	$2,724,031.42
Balance subject to tax	2,724,031.42
Income tax 13½ per cent	367,744.24
Total tax assessable	367,744.24
Total previously assessed	266,349.00
Additional tax to be assessed	$101,395.24

SCHEDULE 9

YEAR ENDED DECEMBER 31, 1928

NET INCOME

Net income as disclosed by return		$525,710.53
As corrected		3,164,203.12
Net adjustment		$2,638,492.59
Unallowable deductions and additional income:		
(a) Depreciation disallowed	$119,018.16	
(b) Unamortized discount and expense	2,455,855.85	
(c) Loss on property retired	75,338.00	
Total		$2,650,212.01
Nontaxable income and additional deductions:		
(d) Adjustment for taxes	$11,435.47	
(e) Injuries and damages	283.95	
Total		11,719.42
Net adjustment as above		$2,638,492.59

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SCHEDULE 9-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted on basis of rates satisfactory to the Bureau, as follows:

Original Property Account—December 31, 1917		$6,361,266.15
Additions, year 1918		763,131.39
Additions, year 1919		254,607.41
Additions, year 1920		936,396.84
Additions, year 1921		110,600.58
Additions, year 1922		819,996.10
Additions, year 1923		3,504,316.81
Additions, year 1924		1,536,405.49
Additions, year 1925		1,711,033.42
Additions, year 1926		8,890,707.48
Additions, year 1927		6,984,335.94
Total depreciable assets as at December 31, 1927		$31,963,197.61
Depreciation at 2½%		799,079.94
Additions, year 1928	$1,353,335.41	
Depreciation at 1¼% (6 months)		8,458.34
Properties merged during the year: Pennsylvania Edison Company, merged March 1, 1928.		
Original Plant Account at December 31, 1915	$6,609,174.59	
Depreciation at 1½% for 10 months		82,614.68
Additions, 1916 to 1927, inclusive	$4,779,694.03	
Depreciation at 2½% for 10 months		99,576.95

37	Hamburg Gas and Electric Company, merged July 1, 1928:		
	Original property account	$179,872.28	
	Depreciation at 1½% for 6 months		$1,349.04
	Additions December 21, 1919, to December 31, 1927	295,035.68	
	Depreciation at 2½% for 6 months		3,687.94
	Additions January 1, 1928, to June 30, 1928	18,111.63	
	Depreciation at 1¼% for 6 months		113.19
	Topton Electric Light and Power Company, merged July 1, 1928:		
	Original property account	81,108.02	
	Depreciation at 1½% for 6 months		608.30
	Additions December 31, 1921, to December 31, 1927	40,954.19	
	Depreciation at 2½% for 6 months		511.93
	Additions January 1, 1928, to June 30, 1928	5,995.70	
	Depreciation at 1¼% for 6 months		37.47
38	Weisenberg Township Electric Light and Power Company, merged July 1, 1928:		
	Original property account	$19,172.62	
	Depreciation at 1½% for 6 months		143.79
	Retirement of original property account at 1½%	(2,040.44)	(15.30)
	Additions to December 31, 1923, to December 31, 1927	235.33	
	Depreciation at 2½% for 6 months		2.94
	Additions January 1, 1928, to June 30, 1928	120.83	
	Depreciation at 1¼% for 6 months		.75
	Bernville Heat, Light and Power Company, merged July 1, 1928:		
	Original property account	19,020.63	
	Depreciation at 1½% for 6 months		142.65
	Additions December 31, 1922, to December 31, 1927	13,926.40	
	Depreciation at 2½% for 6 months		174.08
	Additions January 1, 1928, to June 30, 1928	1,670.14	
	Depreciation at 1¼% for 6 months		10.44
39	Blue Mountain Electric Company, merged July 1, 1928:		
	Original property account	$98,612.02	
	Depreciation at 1½% for 6 months		739.59
	Retirement original property account at 1½% for 6 months	(300.02)	(2.25)
	Additions December 31, 1920 to December 31, 1927	95,322.66	
	Depreciation at 2½% for 6 months		1,191.53
	Additions January 1, 1928 to June 30, 1928	4,996.36	
	Depreciation at 1¼% for 6 months		31.23
	Boyertown Electric Company, merged July 1, 1928:		
	Original property account	75,493.67	
	Depreciation at 1½% for 6 months		566.20
	Retirement original property account at 1½% for 6 months	(9,050.53)	(67.88)
	Additions July 1, 1916, to December 31, 1927	240,339.20	
	Depreciation at 2½% for 6 months		3,004.24
	Additions January 1, 1928 to June 30, 1928	32,232.75	
	Depreciation at 1¼% for 6 months		201.45
40	Annville and Palmyra Electric Company merged July 1, 1928:		
	Original property account	$152,942.25	
	Depreciation at 1½% for 6 months		1,147.07
	Additions July 31, 1921 to December 31, 1927	48,182.76	
	Depreciation at 2½% for 6 months		602.28
	Additions January 1, 1928 to June 30, 1928	3,744.39	
	Depreciation at 1¼% for 6 months		23.40

The French Creek Electric Company, merged July 1, 1928:		
Original property account	$5,000.00	
Depreciation at 1½% for 6 months		$37.50
Additions December 31, 1918 to December 31, 1927	5,623.62	
Depreciation at 2½% for 6 months		70.30
Additions January 1, 1928 to June 30, 1928	344.18	
Depreciation at 1¼% for 6 months		2.15
41 Birdsboro Electric Company, merged July 1, 1928:		
Original property account	$24,061.48	
Depreciation at 1½% for 6 months		180.46
Retirement, original property account at 1½%	(5,077.36)	(38.08)
Additions December 31, 1918 to December 31, 1927	30,361.48	
Depreciation at 2½% for 6 months		379.52
Additions January 1, 1928 to June 30, 1928	3,524.24	
Depreciation at 1¼% for 6 months		22.03
Berks Lehigh Electric Company, merged July 1, 1928:		
Original property account	27,964.97	
Depreciation at 1½% for 6 months		209.74
Additions December 31, 1922 to December 31, 1927	10,732.40	
Depreciation at 2½% for 6 months		134.16
Additions January 1, 1928 to June 30, 1928	1,626.86	
Depreciation at 1¼% for 6 months		10.17
42 Ortanna Electric Light and Power Company, merged July 1, 1928:		
Original property account	$49,977.07	
Depreciation at 1½% for 6 months		374.83
Retirement original property account at 1½% for 6 months	(706.84)	(5.30)
Additions December 21, 1923, to December 31, 1927	25,565.03	
Depreciation at 2½% for 6 months		319.56
Additions January 1, 1928, to June 30, 1928	1,208.31	
Depreciation at 1¼% for 6 months		7.55
Total depreciation allowable		$1,005,638.58
Depreciation deducted on return		1,124,656.74
Depreciation disallowed		$119,018.16
(b) Premium paid and unamortized discount on bonds retired in 1927 and 1928		$3,068,410.61
Less: Amount claimed in 1927		551,742.90
Balance claimed in 1928		$2,516,667.71
Less: Amount amortized and charged to expense but not claimed on return, herein allowed		60,811.86
Amount disallowed		$2,455,855.85

43 This adjustment is based on Exhibit CL and CM attached to revenue agent's report dated March 1, 1930, a copy of which has been furnished you and is herewith made a part of this letter.

The premium paid and the unamortized discount on bonds which were redeemed through the issuance on March 1, 1928, of your 1st Refunding 5 per cent Gold Series C 40-year bonds is not an allowable deduction for the year 1928 but should be amortized over the life of the new issue.

The deduction for amortization as computed by you on the amount of $3,068,410.61, but which was not claimed as a deduction on your return has been allowed as indicated above.

(c) For explanation of this adjustment see item (d), schedule 1-A.

(d) This item shown on your return as an unallowable deduction apparently representing a refund of fee paid in prior years on stock issue, is deemed an allowable deduction. Since this item was not allowed as a deduction when incurred it follows that the cancellation thereof, conversely, does not represent taxable income.

(e) This amount represents the excess of payments over accruals account of injuries and damages and is computed as follows:

Total payments	$32,234.58
Total accruals	31,950.63
Adjustment as above	$283.95

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SCHEDULE 10

EASTON GAS WORKS—YEAR ENDED DECEMBER 31, 1928

NET INCOME

Net income as disclosed by return		$40,536.55
As corrected		55,618.56
Net adjustment		$15,082.01
Unallowable deductions and additional income:		
(a) Prior year loss	$14,663.04	
(b) Depreciation disallowed	418.97	
Total		$15,082.01

SCHEDULE 10-A

EXPLANATION OF ITEMS CHANGED

(a) For explanation of this adjustment see item (b), schedule 3-A. Reference, Article 342 of Regulations 74.

(b) Depreciation has been adjusted on basis of rates satisfactory to the Bureau as follows:

Total depreciable assets as of December 31, 1912	$1,021,884.93	
Depreciation at 2½%		$25,547.12
Additions, December 31, 1912, to December 31, 1923	177,138.26	
Depreciation at 2½%		4,428.46
Additions, year 1924	261,969.93	
Depreciation at 2½%		6,549.25
Additions, year 1925	168,235.63	
Depreciation at 2½%		4,205.89
Additions, year 1926	115,228.57	
Depreciation at 2½%		2,880.71
45 Additions, year 1927	215,546.08	
Depreciation at 2½%		5,388.66
Additions, year 1928	71,016.12	
Depreciation at 1¼%		887.70
Total depreciation allowable		$49,887.79
Depreciation deducted on return		50,306.76
Depreciation disallowed		$ 418.97

SCHEDULE 11

INTERURBAN GAS COMPANY—YEAR ENDED DECEMBER 31, 1928

NET INCOME

Net income as disclosed by return		$5,208.1
As corrected		6,181.0
Net adjustment		$ 972.9
Unallowable deductions and additional income: (a) Depreciation disallowed	$972.93	

SCHEDULE 11-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been computed on basis of rates acceptable to the Bureau as follows:

Additions 1916 to 1927, inclusive	$18,167.23	
Depreciation at 2½%		$ 454.1
Additions, year 1928	444.85	
Depreciation at 1¼%		5.5
Total depreciation allowable		$ 459.7
Depreciation deducted on return		1,432.6
Depreciation disallowed		$ 972.9

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SCHEDULE 12

HANOVER AND MCSHERRYSTOWN STREET RAILWAY COMPANY—YEAR ENDED DECEMBER 31, 1928

NET INCOME

Net income as disclosed by return		$4,694.8
As corrected		4,725.6
Net adjustment		$ 30.8
Unallowable deductions and additional income: (a) Depreciation disallowed		$ 30.8

SCHEDULE 12-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted at rates acceptable to the Bureau as follows:

Original property account at April 1, 1923	$265,504.96	
Depreciation at 1½%		$3,982.5
Additions from April 1, 1923, to December 31, 1927	2,360.00	
Depreciation at 2½%		59.0
Additions, year 1928	7,605.30	
Depreciation at 1¼%		95.0
Total depreciation allowable		$4,136.6
Depreciation deducted on return		4,167.4
Depreciation disallowed		$ 30.8

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SCHEDULE 13

THE MARYLAND PUBLIC SERVICE COMPANY—YEAR ENDED DECEMBER 31, 1928

NET INCOME

Net income as disclosed by return		$673.82
As corrected		731.51
Net adjustment		$57.69
Unallowable deductions and additional income: (a) Depreciation disallowed		$57.69

SCHEDULE 13-A

EXPLANATION OF ITEMS CHANGED

Depreciation has been adjusted at rates acceptable to the Bureau as follows:

Total depreciable assets at December 31, 1927	$11,403.44	
Depreciation at 2½%		$285.09
Additions, year 1928	289.21	
Depreciation at 1¼%		3.36
Depreciation allowable		$288.45
Depreciation deducted in return		346.14
Depreciation disallowed		$57.69

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SCHEDULE 14

HAMBURG GAS AND ELECTRIC COMPANY—PERIOD APRIL 1, 1928, TO JULY 1, 1928

NET INCOME

Net income as disclosed by return		$16,411.15
As corrected		17,963.88
Net adjustment		$1,552.73
Unallowable deductions and additional income: (a) Depreciation disallowed		$1,552.73

SCHEDULE 14-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted on basis of rates acceptable to the Bureau as follows:

Original property account December 31, 1919	$179,872.28	
Depreciation at 1½% for three months		$674.52
Additions, December 31, 1919, to December 31, 1927	295,035.68	
Depreciation at 2½% for three months		1,843.97
Additions, January 1, 1928, to June 30, 1928	18,111.63	
Depreciation at 1¼% for three months		56.60
Depreciation allowable		$2,575.09
Depreciation taken on return		84,127.82
Depreciation disallowed		$1,552.73

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SCHEDULE 15

TOPTON ELECTRIC LIGHT AND POWER COMPANY—PERIOD APRIL 1, 1928, TO JULY 1, 1928

NET INCOME

Net income as disclosed by return		$2,714.4
As corrected		3,289.4
Net adjustment		$575.0
Unallowable deductions and additional income: (a) Depreciation disallowed		$575.0

SCHEDULE 15-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted at rates acceptable to the Bureau as follows:

Original property account at December 31, 1921	$81,106.02	
Depreciation at 1½% for three months		$304.1
Additions, December 31, 1921, to December 31, 1927	40,964.19	
Depreciation at 2½% for three months		255.9
Additions, January 1, 1928, to June 30, 1928	5,905.70	
Depreciation at 1¼% for three months		18.7
Depreciation allowable		$578.8
Depreciation deducted		1,153.8
Depreciation disallowed		$575.0

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SCHEDULE 16

WEISENBURG TOWNSHIP ELECTRIC LIGHT AND POWER COMPANY—PERIOD APRIL 1, 1928, TO JULY 1, 1928

NET INCOME

Net income as disclosed by return		$262.14
As corrected		419.61
Net adjustment		$157.47
Unallowable deductions and additional income: (a) Additional depreciation		$157.47

SCHEDULE 16-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted at rates acceptable to the Bureau as follows:

Original property account at December 31, 1923	$19,172.62	
Depreciation at 1½% for three months		$71.9
Retirement of original property account	(2,040.44)	
Depreciation at 1½% for three months		(7.6
Additions, December 31, 1923, to December 31, 1927	235.33	
Depreciation at 2½% for three months		1.4
Additions, January 1 to June 30, 1928	120.83	
Depreciation at 1¼% for three months		.3
Depreciation allowable		$66.0
Depreciation deducted on return		223.5
Depreciation disallowed		$157.4

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SCHEDULE 17

BIRDSBORO ELECTRIC COMPANY—PERIOD APRIL 1, 1928, TO JULY 1, 1928

NET INCOME

Net income as disclosed by return		$4,738.71
As corrected		5,066.75
Net adjustment		$328.04
Unallowable deductions and additional income: (a) Depreciation disallowed	$328.04	
Net adjustment as above		$328.04

SCHEDULE 17-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted on basis of rates acceptable to the Bureau as follows:

Original property account December 31, 1918	$24,061.48	
Depreciation at 1½% for three months		$90.23
Retirement original property account	($5,077.36)	
Depreciation at 1½% for three months		(19.04)
Additions, December 31, 1918, to December 31, 1927	$30,361.48	
Depreciation at 2½% for three months		189.76
Additions, January 1, 1928, to June 30, 1928	$3,524.24	
Depreciation at 1¼% for three months		11.01
Depreciation allowable		$271.96
Depreciation deducted on return		600.00
Depreciation disallowed		$328.04

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SCHEDULE 18

BOYERTOWN ELECTRIC COMPANY—PERIOD APRIL 1, 1928, TO JULY 1, 1928

NET INCOME

Net income as disclosed by return		$6,967.21
As corrected		10,495.83
Net adjustment		$3,528.62
Unallowable deductions and additional income: (a) Depreciation disallowed	$3,528.62	
Net adjustment as above		$3,528.62

SCHEDULE 18-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been adjusted on basis of rates acceptable to the Bureau as follows:

Original property account July 1, 1916	$75,493.67	
Depreciation at 1½% for three months		$283.10
Retirements original property account	($9,050.53)	
Depreciation at 1½% for three months		(33.94)
Additions, July 1, 1916, to December 31, 1927	$240,339.20	
Depreciation at 2½% for three months		$1,502.12
Additions, January 1, 1928, to June 30, 1928	$32,232.75	
Depreciation at 1¼% for three months		100.72
Depreciation allowable		$1,852.00
Depreciation deducted on return		5,380.62
Depreciation disallowed		$3,528.62

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SCHEDULE 19

PENNSYLVANIA EDISON COMPANY—PERIOD JANUARY 1, 1928, TO FEBRUARY 28, 1928

NET INCOME

Net income as disclosed by return		$89,177.35
As corrected		95,213.13
Net adjustment		$6,035.78
Unallowable deductions and additional income:		
(a) Depreciation disallowed	$4,688.49	
(b) Loss on property retired	1,347.29	
Net adjustment as above		$6,035.78

SCHEDULE 19-A

EXPLANATION OF ITEMS CHANGED

(a) Depreciation has been computed at rates acceptable to the Bureau as follows:

Original plant account	$6,609,174.59	
Depreciation at 1½% for two months		$16,522.94
Additions, years 1916 to 1926	$4,288,035.34	
Depreciation at 2½% for two months		17,866.82
Additions, year 1927	$491,658.69	
Depreciation at 2½% for two months		2,048.58
Total depreciation allowable		$36,438.34
Depreciation deducted on return		41,126.83
Depreciated disallowed		$4,688.49

(b) For explanation of this item see, item (d) Schedule 1-A.

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SCHEDULE 20

METROPOLITAN EDISON COMPANY—YEAR ENDED DECEMBER 31, 1928

CONSOLIDATED NET INCOME

Net Income as Corrected:	
Schedule 9—Metropolitan Edison Company	$3,164,203.12
Schedule 10—Easton Gas Works	55,618.56
Schedule 11—Interurban Gas Company	6,181.03
Schedule 12—Hanover and McSherrystown Street Railway Company	4,725.64
Schedule 13—The Maryland Public Service Company	731.51
Schedule 14—Hamburg Gas and Electric Company	17,963.88
Schedule 15—Topton Electric Light and Power Company	3,289.45
Schedule 16—Weisenberg Township Electric Light and Power Company	419.61
Schedule 17—Birdsboro Electric Company	5,066.75
Schedule 18—Boyertown Electric Company	10,495.83
Return—Annville and Palmyra Electric Light Company	19,314.26
Return—The French Creek Electric Company	637.65
Return—Bernville Light, Heat, and Power Company	1,138.54

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SCHEDULE 21

METROPOLITAN EDISON COMPANY

CONSOLIDATED RECONCILIATION OF SURPLUS—YEAR 1928

	Metropolitan Edison Company	Easton Gas Works	Interurban Gas Company	Hanover and McSherrystown Street Railway Company	The Maryland Public Service Company	Hamburg Gas and Electric Company	Topton Electric Light and Power Company	Weissenburg Township Electric Light and Power Company	Birdsboro Electric Company	Ontarna Electric Light and Power Company	Boyertown Electric Company	
Surplus reported December 31, 1927	$3, 126, 165. 06	$111, 833. 84	$9, 338. 66	$151, 526. 98	$1, 983. 21	$199, 821. 20	$41, 461. 71	$3, 966. 71	$85, 156. 96	$9, 123. 79	$163, 889. 18	
Net taxable income as corrected	3, 164, 269. 12	55, 818. 56	6, 181. 03	4, 725. 64	731. 51	17, 963. 88	3, 289. 45	419. 61	5, 086. 75	(388. 96)	10, 495. 83	
Nontaxable income and Additional Deductions:												
Dividends received	836, 320. 52											
Interest charged to construction	55, 352. 46											
Reserve for injuries and damages	13, 434. 56	644. 54		(1, 135. 00)								
Additional depreciation allowed	243, 541. 71	4, 987. 79	459. 74	4, 136. 64	288. 45	(1, 552. 73)	(575. 04)	(157. 47)	(228. 04)		(3, 528. 62)	
Reserve for bad debts, charges						79. 01	9. 20		15. 00	18. 83	83. 88	
Total	$7, 297, 217. 45	$172, 983. 73	$15, 979. 43	$159, 254. 26	$3, 003. 17	$216, 311. 36	$44, 185. 32	$4, 248. 76	$89, 910. 67	$8, 543. 46	$170, 940. 27	
Unallowable Deductions and Additional Income:												
Federal income taxes	$444, 161. 37	$5, 000. 00	$400. 00	$600. 00	$120. 00	$200. 00	$75. 00	$20. 00	$600. 00	$75. 00	$1, 350. 00	
Tax on tax-free bonds	13, 900. 00	420. 00		2. 14		12. 00						
Reduction in value of stock acquired	233, 235. 34											
Dividends paid	2, 473, 402. 87	40, 940. 00										
Prior year loss		14, 663. 04										
Surplus of companies merged, transferred						215, 999. 36	44, 110. 72	4, 218. 76	88, 310. 67	8, 468. 46	169, 590. 27	
Total	$3, 164, 699. 58	$62, 023. 04	$400. 00	$602. 14	$120. 00	$216, 311. 36	$44, 185. 32	$4, 248. 76	$89, 910. 67	$8, 543. 46	$170, 940. 27	
Surplus as reported December 31, 1928	$4, 093, 517. 87	$110, 960. 69	$15, 579. 43	$158, 652. 12	$2, 983. 17							

Ontanna Electric Light and Power Company	Bovertown Electric Company	Annville and Palmyra Electric Light Company	The French Creek Electric Company	Bennville Light, Heat and Power Company	Berks-Lehigh Electric Company	Blue Mountain Electric Company	Pennsylvania Edison Company	Total
$9, 123. 79	$163, 899. 18	$115, 128. 74	$2, 948. 43	$12, 503. 63	$13, 196. 71	$55, 957. 73	$461, 391. 71	$4, 545, 005. 16
(598. 96)	10, 495. 83	19, 314. 26	257. 65	1, 138. 54	(132. 73)	6, 471. 95	95, 213. 13	3, 390, 732. 17
							9, 068. 34	665, 588. 86
							258. 29	55, 610. 75
							(1, 053. 41)	11, 889. 71
	(3, 528. 62)						17, 670. 80	263, 843. 23
18. 62	83. 88	64. 45		41. 75		191. 14		503. 06
$8, 543. 46	$170, 940. 27	$134, 307. 45	$3, 187. 08	$13, 683. 92	$13, 046. 98	$62, 620. 82	$582, 548. 86	$8, 933, 172. 94
$75. 00	$1, 350. 00	$750. 00		$125. 00	$75. 00	$800. 00	$10, 000. 00	$465, 271. 37
						3. 00	400. 00	14, 637. 14
								233, 335. 34
							572, 148. 86	3, 086, 491. 73
								14, 663. 04
8, 468. 46	169, 590. 27	133, 757. 45	3, 187. 08	13, 548. 92	12, 971. 98	62, 017. 82		737, 181. 04
$8, 543. 46	$170, 940. 27	$134, 507. 45	$3, 187. 08	$13, 683. 92	$13, 046. 98	$62, 620. 82	$582, 548. 86	$4, 551, 579. 66
								$4, 381, 593. 28

Net Income as Corrected:		
Return—Blue Mountain Electric Company	$6,471.95	
Schedule 19—Pennsylvania Edison Company	95,213.13	
Return—Central Broadheads Power Company	None	
Total net income		$3,391,470.91
Net Losses as Corrected:		
Return—Ortanna Electric Light and Power Company	$598.96	
Return—Berks-Lehigh Electric Company	139.78	
Total net losses		738.74
Consolidated net income as corrected		$3,390,732.17

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SCHEDULE 22

COMPUTATION OF TAX

INCOME TAX

Net income for taxable year	$3,390,732.17
Balance subject to tax	$3,390,732.17
Income tax 12 per cent	$406,887.86
Total tax assessable	$406,887.86
Total previously assessed	86,870.22
Additional tax to be assessed	$320,017.64

Before United States Board of Tax Appeals

Answer

Filed June 10, 1931

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I. Admits the allegations contained in paragraph I.

II. Admits the allegations contained in paragraph II.

III. Admits the allegations contained in paragraph III.

IV. Admits that the taxes in controversy are income taxes for the taxable years 1927 and 1928 and that the notice of deficiency shows deficiencies in said taxes in the respective amounts of $101,395.24 and $320,017.64.

V (A) to (E), inclusive. Denies that the Commissioner has committed any errors as alleged in subparagraphs (A) to (E), inclusive, of paragraph V.

58 VI (A) (1) to (26), inclusive. Denies the allegations contained in subparagraphs (1) to (26), inclusive, of paragraph VI (A).

VI (B) (1) to (6), inclusive. Denies the allegations contained in subparagraphs (1) to (6), inclusive, of paragraph VI (B).

VI (C) (1) and (2). Denies the allegations contained in subparagraphs (1) and (2) of paragraph VI (C).

VI (D) (1) to (4), inclusive. Denies the allegations contained in subparagraphs (1) to (4), inclusive, of paragraph VI (D).

VI (E). Denies the allegations contained in paragraph VI (E).

VII. Denies generally and specifically each and every allegation contained in taxpayer's petition and not hereinbefore admitted, qualified, or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

(Sgd.) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of Counsel:

EUGENE MEACHAM,
C. E. LOWERY,
Special Attorneys, Bureau of Internal Revenue.

59 **Before United States Board of Tax Appeals**

Docket No. 57869. Promulgated May 14, 1937

METROPOLITAN EDISON COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Findings of fact and opinion

Rendered May 14, 1937

1. A corporation which in a prior year had issued its own bonds at a discount and which in the taxable year redeemed such bonds for cash, at a premium, with funds which it had secured from a new bond issue, is entitled to deduct the unamortized discount and expenses applicable to the bonds redeemed and also is entitled to deduct the premiums incurred and paid in their redemption.

2. In the taxable year certain subsidiaries of petitioner transferred their assets to petitioner. In prior years these subsidiaries had issued bonds at a discount. In the taxable year these subsidiaries redeemed in cash their own bonds with funds advanced by petitioner out of the proceeds of a new bond issue floated by petitioner. Held, that petitioner in a consolidated return filed with said subsidiaries is entitled to deduct the unamortized discount applicable to the bonds redeemed.

3. In the taxable years petitioner called and redeemed at a premium certain bonds which had been issued prior thereto by certain of its subsidiaries, the face value of which bonds petitioner had assumed and agreed to pay in a transfer of the assets of these subsidiaries to petitioner. Held, petitioner is entitled to deduct
60 the amount of the premiums paid in the redemption of these bonds. Coast Counties Gas & Electric Co., 33 B. T. A. 1199, overruled on this point.

4. In the taxable year petitioner liquidated one of its subsidiaries, taking over its assets in exchange for the transfer and cancellation of all its capital stock and assuming all its liabilities, including bonds which in a prior year the subsidiary had sold at a discount and the payment of which petitioner had guaranteed at the time of issuance. Petitioner called the outstanding bonds for redemption. Held, petitioner is not entitled to take as a deduction the unamortized discount and expense applicable to such bonds.

5. In years prior to the taxable year, petitioner had taken over the assets of certain of its subsidiaries under what is termed "short form of merger" under Pennsylvania law. In prior years these subsidiaries had issued bonds at a discount. Held, that the taking over of the assets of the subsidiaries by the parent corporation was in effect a liquidation of the subsidiaries in consideration of the transfer and cancellation of all their capital stock and the assumption by petitioner

of all their liabilities, including the outstanding bonds, and does not come under the rule governing the consolidation of corporations. Held, further, petitioner is not entitled to take as a deduction in the taxable year on its consolidated return the unamortized discount and expenses applicable to these bonds.

6. Prior to the taxable year, three certain corporations chartered under Pennsylvania law merged and consolidated under Pennsylvania statutes to form petitioner and thereupon petitioner succeeded by operation of law to all the rights, privileges, assets, and liabilities of the three merging corporations. Prior to the merger and consolidation one of the corporations had issued bonds at a discount. In the taxable year petitioner called and redeemed some
61 of these bonds. Held, petitioner is entitled to take as a dededuction in the taxable year the unamortized discount and expenses applicable to such bonds redeemed.

Francis J. Sweeney, Esq., for the petitioner.

Chester A. Gwinn, Esq., for the respondent.

This proceeding involves deficiencies in income taxes of $101,395.24 for 1927 and $320,017.64 for 1928.

The petition assigns numerous errors, but all of these have been setiled by agreement except certain issues which have been stated in a stipulation filed at the hearing by the parties. The issues which remain for our decision are stated in the stipulation, as follows:

(A) Whether respondent erred in refusing to allow as a deduction from petitioner's gross income in 1927 the sum of $551,742.90, composed of $243,645.00, representing the amount of premiums accrued and paid by the petitioner in said year upon the retirement of $3,250,000 face value of Metropolitan Power Company First Mortgage Gold Bonds, Series A, due in 1953, and $308,097.90, representing the amount of unamortized discount and expense on said bonds at the time they were retired in 1927?

(B) Whether the respondent erred in refusing to allow as a deduction from petitioner's gross income in 1928 the sum of $2,455,855.85 after deduction of $60,811.86 from $2,516,667.71 composed of $607,978.14, representing the amount of premium paid by the petitioner in said year upon the retirement of $6,080,000 of its First and Refunding Gold Bonds, Series B, due in 1952, $489,167.15 representing the amount of unamortized discount and expense on said bonds at the time they were retired in 1928, and $645,251.34, representing premiums paid and $774,271.08, representing unamortized debt discount and expense, pertaining to the other bonds hereinbefore recited which were retired in 1928? All other issues raised by the pleadings
62 have been settled by agreement of the parties, and the result of such settlement is reflected in the following stipulations as to the amounts of the deficiencies, to-wit:

(a) If both issues (A & B) are decided in favor of the respondent, the amounts of the deficiencies are (1927) $54,549.21, (1928) $283,025.50.

(b) If both issues are decided in favor of the petitioner, the amounts of the overpayments are (1927) $19,936.08, (1928) $11,677.20. If the Board's decision is otherwise than indicated in paragraphs (a) and (b), supra, the amount of the deficiencies or overpayments should be determined under Board Rule 50.

Findings of fact

The facts have been embodied in a stipulation, together with certain exhibits attached thereto. These are adopted as our findings of fact. The stipulation of facts will be embodied as a part of this report, but the exhibits therein referred to, some of which are quite lengthy, will be omitted because it is not deemed necessary to copy them in this report.

The stipulation of facts is as follows:

1. The petitioner, Metropolitan Edison Company, a corporation duly organized and existing under the laws of the State of Pennsylvania, is and was at all times material to this proceeding, engaged in the business of supplying electric light and power in the Cities of Reading and Lebanon, Pennsylvania, and extensive surrounding territory. The petitioner, through affiliated subsidiaries, also operates a unified system of electric properties, which serve Easton, York, York Haven, Hanover, Gettysburg, and adjacent communities in Pennsylvania and Northern Maryland, embracing 184 communities, besides 123 boroughs and towns where power is wholesaled to local distributing companies, serving a population of about 662,000 with 508 miles of high tension transmission lines and 703 miles of distribution lines, a large portion of those in the City of Reading being in underground conduits.

63 2. The petitioner, with its affiliated taxpayers, filed consolidated returns for the calendar years 1927 and 1928. A list of the affiliated taxpayers appears on pages 1, 2, and 3 of the notice of deficiency, being Exhibit A attached to the petition.

3. Metropolitan Power Company (hereinafter called Power Co.) was organized under the laws of Pennsylvania, on April 24, 1923. All its stock was owned by the petitioner. On or about July 17, 1923, the Power Co. assumed, with the sanction of the Pennsylvania Public Service Commission, the legal status of a public service company with all the obligations imposed upon it by such status, and upon its written stipulation that the Certificate of Public Convenience may be limited to the erection, operation, and maintenance of a plant and proper associated facilities for the manufacture of electric energy in and adjoining the Borough of Middletown, Dauphin County, Pennsylvania, and for the distribution and sale at said plant, and not elsewhere, of electrical energy. The purpose of the Power Co. was to build and operate a large electric generating station on the Sus-

quehanna River, embracing a tract of about 62½ acres in the Borou of Middletown, an advantageous location for its power plant. A the electricity generated at the station was sold to the petitio pursuant to a contract whereby the petitioner agreed to pay there a total amount sufficient to enable the Power Co. to earn a gr revenue at least sufficient to meet all costs of operation and ot charges, other than for capital purposes, including maintenan depreciation, taxes, and interest on indebtedness.

4. The Power Co. was organized as a separate corporation in or to be able to raise a large part of the necessary construction fu through a first lien mortgage on the plant. The petitioner, in 19 purchased and guaranteed and sold to the public, all of the bo issued by the Power Co.; purchased all of the stock and loaned the Power Co. on open account approximately $3,000,000 and, exc for the $3,250,000 of bonds, the petitioner was practically the s investor and creditor. These bonds were originally issued
64 90 to the petitioner, which immediately endorsed them a guaranteed them as to principal and interest and sold th at the same price.

5. On February 15, 1927, the Public Service Commission of t State of Pennsylvania issued its Certificate of Public Convenie granting the application of the Power Co. for approval of the s of all its property except public franchises to the petitioner. (T petition specifically states that the Power Co. had no public fr chises; and for that reason a sale was resorted to rather than merger.) The actual transfer, according to the books, took pl on February 28, 1927. All its assets and liabilities were transfer to the books of the petitioner as they stood on the books of the Po Co. The deficit from operations was charged against the surp of the petitioner. The petitioner surrendered the entire capital st of the Power Co. to it for cancellation and the company beca inactive on or about February 28, 1927, and continued inactive u its dissolution on or about January 8, 1928.

6. The petitioner, on February 28, 1927, assumed the $3,250,0 liability of the Power Co.'s First Mortgage Gold Bonds, Series 6% due June 1, 1953, which, as stated supra, were guaranteed by at issuance, of which the entire amount was outstanding in the ha of nonaffiliated parties. The inter-corporate debt of the Power C to the petitioner was cancelled in the amount of approximat $3,000,000.

7. The bonds assumed were callable on thirty days' published not on any interest date to and including June 1, 1938, at 107½%; a pursuant to the terms of the indenture the bonds were called f redemption on December 1, 1927, by the petitioner, which purcha or redeemed and then retired during the calendar year 1927 t following First Mortgage Gold Bonds, Series A 6% due 1953 of t Power Co., as follows:

65 Date purchased and/or redeemed *	Principal amount	Price	Accrued and paid premium
October 21, 1927	$1,000	$107.125	$71.22
October 21, 1927	5,000	107.25	362.50
November 11, 1927	27,000	107.375	1,991.25
November 17, 1927	1,000	107.50	75.00
November 21, 1927	25,000	107.375	1,843.75
November 21, 1927	17,000	107.50	1,275.00
November 27, 1927	19,000	107.375	1,401.25
December 1, 1927 *	$3,155,000	107.50	236,625.00
Total	$3,250,000		$243,645.00

8. At the time of the redemption of said bonds, as aforesaid, there remained of the debt discount and expense incurred on the issuance of said bonds $308,097.90, unamortized by annual deductions. Petitioner now claims the right to deduct from its gross income for 1927 premiums accrued and paid in 1927, amounting to $243,645.00 and said unamortized debt discount and expense, or a total of $551,742.90.

9. There are attached hereto and made a part hereof: Exhibit A, Certificate of the Secretary of the Public Service Commission of the Commonwealth of Pennsylvania dated February 25, 1927; Exhibit B, Certificate of Public Convenience dated February 15, 1927; Exhibit C, Report and Order of the Public Service Commission dated February 15, 1927; Exhibit D, Application of the Power Co. for Certificate of Public Convenience; Exhibit E, letter dated February 4, 1927, from Hedley V. Cooke to the Secretary of the Public Service Commission in reply to Exhibit F, the Public Service Commission's letter of January 31, 1927.

10. On or about June 9, 1927, the petitioner sold 28,000 shares of its common capital stock for $1,540,000, and on November 29, 1927, it borrowed from General Gas & Electric Corporation on a demand note $1,700,000, which funds were employed to retire the aforesaid First Mortgage 6% Bonds issued by the Power Co., guaranteed both as to principal and interest by petitioner at the time of issue and assumed upon the acquisition of the assets of the Power Co. in February, 1927.

66 11. On February 1, 1928, the petitioner, pursuant to previous notice and call, as required by the Indenture, retired bonds of the principal amount of 6,080,000 (being all of the bonds outstanding) of its First and Refunding Mortgage Gold Bonds, Series B, 6% issued February 1, 1922, and maturing February 1, 1952. Upon said retirement, the petitioner paid in cash a premium of $607,978.14, which thereupon accrued. The premium or call price was $110. A small amount of the bonds were purchased during the calendar year 1928 for retirement before the actual retirement date at slightly less than $110. This explains why the premium accrued and paid is as above stated, rather than $608,700. The amount of unamortized discount and expense on said bonds at the time of their retirement in 1928 was $489,167.15. Petitioner claims these amounts as deductions from income in 1928. The total premiums and unamortized

debt discount and expense at the time of retirement incurred and accrued during the calendar year 1928 upon the aforesaid retirement, amounted to the sum of $1,097,145.29. The object of the company in retiring these bonds was to reduce its interest expense rate from 6% to 4½% and to simplify the corporate funded debt structure. The retirement was accomplished by funds which were borrowed on a short term note to the Guaranty Trust Company, which loan was repaid from the proceeds of petitioner's issue of $23,000,000 First Mortgage 4½% Gold Bonds, Series D, issued March 1, 1928, due in 1968.

12. During the calendar year 1928 the petitioner pursuant to the terms of the various indentures hereinafter referred to, called and retired the following obligations of former subsidiaries which it theretofore had assumed by merger under the Laws of Pennsylvania, as more particularly said hereinafter. In retiring these assumed obligations, the petitioner incurred and paid premiums as follows:

67 Description of the obligation assumed by the petitioner upon merger	Principal retired	Premium incurred and paid
Cumberland Valley Light & Power Co. 1st Mtg. 6's 1951	$30,400.00	912.0
York Haven Water & Power Co. 5's due 1957	$1,345,000.00	$66,905.0
Hanover Power Co. 1st Mtg. 6's Series A 6/1/28 Series B & C due 1941	807,200.00	12,492.5
Metropolitan Electric Co. 1st Mtg. 5's due 1939	2,348,000.00	234,425.0
Pennsylvania Edison Co. 1st A 5's B 6's Mtg. 1946 (See note A)	6,612,300.00	330,520.0
Total Premiums Incurred and Paid on Retirement		$645,251.5

At the time the aforesaid obligations were redeemed and retired there existed unamortized debt discount and expense amounting to $769,864.54 and consisted of:

Description of the obligation assumed by the petitioner upon merger	Unamortized debt discount and expense at retirement
Cumberland Valley Light & Power Co. 1st Mtg. 6's 1951	$9,736.0
York Haven Water & Power Co. 5's due 1957 Advertising Notice of Redemption	171.0
Hanover Power Co. 1st Mtg. 6's Series A due 6/1/28 series B & C due 1941	50,215.5
Metropolitan Electric Co. 1st Mtg. 5's 1939	17,363.2
Pennsylvania Edison Co. 1st Mtg. A 5's B 6's 1946 (See Note A)	692,376.9
Total Unamortized Debt Discount and Expense incurred at retirement	$769,864.5

NOTE A.—Pennsylvania Utilities Co. and Pennsylvania Edison Co. merged in 1921 see Exhibit K. Prior to the merger Pennsylvania Utilities Co. had issued $1,715,300.00 of said bonds while Pennsylvania Edison Co. issued $4,797,100.00 of said bonds subsequent to said merger in 1921.

68 Petitioner claims the right to deduct the aforesaid items of bond discount and expense and premiums from its gross income for 1928.

13. The obligations under the Indentures were prior liens upon assets acquired at the time the aforesaid companies were merged with the petitioner pursuant to the laws of the Commonwealth of Pennsylvania. At the time of the merger of each of the aforesaid

companies, the assets and liabilities were acquired and transferred by merger and the liabilities thus assumed, as shown in Exhibits G, H, I, J, and K, being the applications to the Public Service Commission of Pennsylvania for approval of the plans of merger and consolidation. The mergers of all of the aforesaid companies were under the act of the General Assembly of the Commonwealth of Pennsylvania April 17, 1876 P. L. 33 and the amendments thereof and supplements thereto except Metropolitan Electric Company which was merged pursuant to Act of May 3, 1909 P. L. 408, Sec. 1 and Pennsylvania Edison Company which was merged under Section 23 of the General Corporation Act of April 29, 1874 P. L. 30 as amended by Section 1 of the Act of April 2, 1915, P. L. 724, and all the mergers aforesaid were upon application with the approval and sanction of the Public Service Commission of the Commonwealth of Pennsylvania under Section 3 (c), Article III and Sections 18 and 19, Article V of the Public Service Company Law with the issuance of a report, order, and certificate of public convenience.

14. On April 1, 1928 pursuant to the terms of the Indenture Hamburg Gas and Electric Company retired the following obligations at par:

$58,500 principal amount First Mortgage and Refunding 5% Gold Bonds issued October 1, 1913 due October 1, 1933.

$48,000 principal amount First Mortgage 5% Gold Bonds issued 1919 due April 1, 1930.

The amount of $4,395.04 represented the unamortized debt discount and expense remaining at the time the bonds were retired, of which 91.2% is applicable to the issue of October 1913 and 8.8% is applicable to the issue of 1910. Petitioner claims said amount as a deduction from income in 1928 consolidation.

69 15. On May 1, 1928, pursuant to the terms of the Indenture, Topton Electric Light and Power Company retired, at par $30,000, principal amount First Mortgage 5% Twenty Year Gold Bonds issued November 1, 1918, due November 1, 1938. At the time of the retirement there existed unamortized discount and expense in the amount of $4.65 which petitioner claims as a deduction in 1928 consolidation.

16. On April 1, 1928, pursuant to the terms of the Indenture, Blue Mountain Electric Company retired, at par, $30,000, First Mortgage 6% Twenty Year Gold Bonds issued April 1, 1921, due April 1, 1941. At the time of the retirement there was incurred and paid, satisfaction fees and expense on said issue in the amount of $6.85 which amount petitioner claims as a deduction in 1928 consolidation.

17. The aforesaid companies (named in paragraphs 14, 15, and 16, supra) became affiliated with the petitioner through the purchase by the latter of their capital stock on April 1, 1928. They were merged with the petitioner on June 30, 1928. The aforesaid retirement of bonds of said companies occurred coincident with the acquisition of

their stock by the petitioner on April 1, 1928, except as stated in paragraph 15 and was effected with funds advanced by the petitioner.

18. Except in the cases as hereinbefore stated where it was obtained through sale of common stock by the petitioner and loans made by the petitioner from General Gas & Electric Corporation and Guaranty Trust Company, the money necessary to carry out the foregoing retirements was obtained from the proceeds of the sale on March 1, 1928, of $23,000,000 of Metropolitan Edison Company's First Mortgage 4½% Gold Bond Series D due March 1, 1968. The premiums, expense, and unamortized debt discount and expense are claimed by the several taxpayers as proper deductions in arriving at the consolidated taxable net income.

19. The respondent has allowed a deduction of $60,811.86 from the petitioner's gross income in 1928, which amount represents an aliquot part of the entire amount of premiums, discount, and expense
70 incident to the retirement of the Power Company's First Mortgage 6% Bonds (due 1953), petitioner's First and Refunding Bonds (due 1952), and the other bonds hereinbefore recited, in said year, as though the same were a part of the discount and expense applicable to petitioner's issue in 1928 of $23,000,000 First Mortgage 4½% Gold Bonds, Series D, due March 1, 1968. The additional deduction claimed by petitioner for 1928 on account of bond premiums, discount, and expense is $2,455,855.85, being the difference between the amount of $2,516,667.71 claimed by the petitioner and $60,811.86 allowed by the respondent.

Opinion

BLACK: The issues which remain for our decision have been set out in our preliminary statement. We think, however, that these issues will be better understood if we subdivide them somewhat and this we shall do.

I

Bond premiums and unamortized discount and expense, relating to redemption of petitioner's own bonds.—We shall first take up petitioner's claim for deduction of $1,097,145.29, being the total premiums and unamortized debt discount and expense incurred and accrued at the time of the retirement of $6,080,000 of petitioner's own bonds in 1928. The facts with reference to the retirement of these bonds are stated in paragraph 11 of the stipulation.

The only contention which respondent makes as to why petitioner is not entitled to the deduction claimed is that the bonds were redeemed with the proceeds of petitioner's new bond issue of $23,000,000 first mortgage 4½ percent gold bonds, series D, issued March 1, 1928, due in 1968, and that the amount claimed should be amortized over the life of these new bonds.

It will be noted that none of petitioner's old bonds redeemed
71 in 1928 were exchanged for bonds of the new issue. The bonds retired were redeemed in cash. Under these circum-

stances petitioner is entitled to the deduction claimed. American Gas & Electric Co., 33 B. T. A. 471; East Ninth Euclid Co., 26 B. T. A. 32; 27 B. T. A. 1289; National Tile Co., 30 B. T. A. 32; San Joaquin Light & Power Co. v. McLaughlin, 65 Fed. (2d) 677; Commissioner v. Columbia Steel Corporation, 67 Fed. (2d) 989; Commissioner v. California-Oregon Power Co., 75 Fed. (2d) 644; Commissioner v. Union Public Service Co., 75 Fed. (2d) 723; Commissioner v. Central States Electric Corporation, 76 Fed. (2d) 1011.

The respondent in his brief admits that the foregoing authorities are against him on this point, but elects not to concede the issue.

II

Unamortized discount and expense of redemption relating to subsidiaries' bonds.—We shall next take up petitioner's claim for deduction on a consolidated return for 1928 of unamortized discount and expense relating to certain bond issues of the Hamburg Gas & Electric Co., Topton Electric Light & Power Co., and Blue Mountain Electric Co.

These corporations were subsidiaries of petitioner and filed consolidated returns with petitioner for the year 1928. The facts with reference to the retirement of these bonds are stated in paragraphs 14, 15, 16, and 17 of the stipulation. These bonds were redeemed by the corporations which issued them with funds advanced by petitioner. Respondent's only contention as to why petitioner is not entitled to take the deduction claimed on the consolidated return is that the funds with which the bonds were redeemed were obtained by petitioner's new issue of $23,000,000 of bonds discussed under I above. Respondent admits that the authorities are against
72 him on this point, but he does not concede the issue. On the strength of the authorities cited under I above, we hold for petitioner on this issue.

III

Bond premiums incurred and paid in redemption of bonds assumed by petitioner in acquiring assets of subsidiary corporations.—We shall next consider petitioner's contention that it is entitled to deduct bond premiums incurred and paid in the redemption of bonds which were not originally issued by petitioner but which it assumed and agreed to pay at the time it acquired all the assets of certain of its subsidiaries. The circumstances attending the assumption of and agreement to pay these several bond issues and the names of the subsidiaries are set forth in the stipulation and need not be repeated here. We deem it unimportant to decide for this point whether petitioner became liable to pay these bonds as a part of the consideration for the purchase of assets in liquidation of a subsidiary or whether the transaction in which the bonds were assumed was a nontaxable reorganization between petitioner and its subsidiary short

of a statutory merger and consolidation, or whether the transaction by which petitioner became liable on the bonds was a statutory merger and consolidation of two or more corporations under which petitioner as the succeeding consolidated corporation became liable on the bonds not by reason of a contract or purchase, but by operation of law. We think in any event, regardless of the form of the transaction, petitioner is entitled to the deduction of the premiums which it paid in the redemption of these bonds. When petitioner became liable to pay the bonds, whether by contract of purchase and assumption, or by contract of merger short of a statutory consolidation, or by operation of law following a statutory merger and
73 consolidation of corporations under the laws of the State of Pennsylvania, it became definitely and legally liable for only the face value of the bonds plus the rate of interest provided in the bonds. The bonds, it is true, contained provisions by which the obligor could declare the premature maturity of the bonds upon condition that certain premiums would be paid upon redemption.

This redeption would usually occur only were prevailing interest rates would justify the calling of the bonds and incurring a premium, so that the debt represented by the bonds could be refunded at a lower interest rate. We do not think that the expenses incurred in redeeming bonds at a premium under such circumstances represent any part of the cost of the assets taken over when liability to pay the face value of the bonds was incurred. Therefore, to say, as respondent contends, that a taxpayer under such circumstances is not entitled to a deduction for the amount of bond premiums incurred in the redemption of bonds, unless he affirmatively shows that he has incurred a loss in the purchase of the assets equal to the amount of the bond premiums paid, is not correct reasoning, we think.

Such, it is true, was the basis of our reasoning in Coast Counties Gas & Electric Co., 33 B. T. A. 1199, but we now think that was error. In that case certain subsidiaries of the Coast Counties Gas & Electric Co., under agreements executed and carried out several years prior to the taxable year in question, transferred their properties to the parent corporation, which, as part of the consideration for such transfers, agreed to pay the bonds of the subsidiaries. In 1930 the bonds were called and retired. The taxpayer, the parent corporation, paid a premium upon some of the bonds. We held that the taxpayer might not deduct the amount of said premium, as there was no showing that it sustained a loss on the transaction.
74 We cited in support of our holding in that respect, Helvering v. American Chicle Co., 291 U. S. 426, and United States v. Kirby Lumber Co., 284 U. S. 1. We distinguished Bowers v. Kerbaugh Empire Co., 271 U. S. 170. On reconsideration we think these cases are not in point. In Helvering v. American Chicle Co., supra, the taxpayer in a purchase of assets had assumed and agreed to pay as a part of the purchase price of the assets taken over, the full face value of the seller's outstanding bonds. Subsequently it purchased some of these bonds at less than their issuing price. The Commis-

sioner determined that the difference between the issuing price of the bonds and the price at which they were purchased represented income to the American Chicle Co. The Supreme Court upheld this contention of the Commissioner, citing United States v. Kirby Lumber Co., supra. The Supreme Court, as a part of its reasoning, said: "Nothing indicates whether respondent lost or gained by the transaction. * * * Here, for aught we know, there was substantial profit—certainly the record does not show the contrary. Doubtless respondent's books indicated a decrease of liabilities with corresponding increase of net assets."

As we have already pointed out, we do not think that bond premiums paid in the redemption of bonds represent a part of the cost of assets taken over. Rather we think they represent part of the expenses of taxpayer's business and are deductible as ordinary and necessary business expenses under the provisions of section 23 (a) of the Revenue Act of 1928, and section 214 (a) of the Revenue Act of 1926, which are applicable to the taxable years involved in this proceeding.

But if we are wrong in characterizing such bond premiums as ordinary and necessary business expenses, such premiums would be deductible under the loss provisions of the applicable statutes. The Court of Claims in the recent case of American Gas & Electric
75 Co. v. United States, 17 Fed. Supp. 151, held, under facts practically the same as those present here, that the corporation, which had assumed and agreed to pay the bonds when it took over the assets of the selling corporation and subsequently called the bonds for redemption at a premium, was entitled to take as a loss deduction the amount of the premiums paid in the year of redemption. It will be thus noted that in the American Gas & Electric Co. case the Court of Claims placed the allowable deduction under the loss provisions of the statute. So it seems plain that whether the amount of bond premiums paid under such circumstances is characterized as business expense or as a loss, it is an allowable deduction in determining taxpayer's net income.

We now think that our holding in the Coast Counties Gas & Electric Co. case, supra, to the contrary was erroneous and on that point it will no longer be followed.

IV

Unamortized discount and expense relating to bonds of the Metropolitan Power Co.—We shall next consider petitioner's claim of the right to deduct unamortized discount and expenses on its consolidated return for 1927 by reason of its redemption in that year of certain bonds previously issued by the Metropolitan Power Co. The amount of the deduction claimed in this respect is $308,097.90. Facts with reference to these bonds are shown in paragraphs 3, 4, 5, 6, 7, 8, 9, and 10 of the stipulation.

Petitioner does not contend that the transaction by which petitioner took over the assets of the Metropolitan Power Co. and assumed all

of its outstanding liabilities, including the bonds in question, was a strict merger under the laws of the State of Pennsylvania. Pe-
76 titioner in its brief terms the transaction as a de facto merger. Regardless of petitioner's characterization, we think the facts which have been stipulated show a liquidation of the Metropolitan Power Co. by its parent, the Metropolitan Edison Co. Such a liquidation is one in which gain or loss is recognized to the parent corporation. Pierce Oil Corporation, 32 B. T. A. 403; Commissioner v. Aluminum Goods Manufacturing Co., 287 U. S. 544; Commissioner v. Riggs National Bank, 57 Fed. (2d) 980. In such a transaction the purchasing corporation is not entitled to deduct the unamortized discount and expenses remaining unrecovered on the bonds previously issued by the subsidiary. Turner-Farber Love Co. v. Commissioner, 68 Fed. (2d) 416; American Gas & Electric Co., 33 B. T. A. 471; affirmed, except as to bonds of Appalachian Power Co., which the court held to have been assumed in a statutory merger or consolidation; American Gas & Electric Co. v. Commissioner, 85 Fed. (2d) 527.

Following these authorities we hold that petitioner is not entitled to the deduction of $308,097.90 unamortized discount and expenses which it claims by reason of the redemption in 1927 of bonds of the Metropolitan Power Co.

V

Unamortized discount and expense relating to bonds assumed by petitioner upon transfer of assets by wholly owned subsidiaries in a so-called "short form" of merger.—We shall next take up petitioner's claim for deduction on a consolidated return for 1928 of $769,864.54 unamortized debt discount and expense of retirement of bonds previously issued by the Cumberland Valley Light & Power Co., York Haven Water & Power Co., Hanover Power Co., and Pennsylvania Edison Co. Facts with reference to these bonds will be found in paragraphs 12 and 13 of the stipulation.

It has been stipulated that during the calendar year 1928 the
77 petitioner, pursuant to the terms of the various indentures referred to, called and retired certain bonds of former subsidiaries which it theretofore had assumed by merger under the laws of the State of Pennsylvania. It has also been stipulated that the four so-called mergers above referred to were under the acts of the General Assembly of the Commonwealth of Pennsylvania of April 29, 1874, and April 17, 1876.

The two acts of April 29, 1874, and April 17, 1876, pursuant to which the contracts were executed, and amendments thereto are embodied in 15 Purdon's Pennsylvania Statutes, Annotated, section 595, and the following provisions are pertinent to this controversy:

"Any corporation created under the provisions of this act, * * * may reduce its capital stock * * * by a vote of the stockholders * * *; and it shall be lawful for any corporation in the same manner to sell, assign, dispose of, and convey to any corporation

created under or accepting the provisions of this act, its franchises, and all its property, real, personal, and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid * * *."

We think that the so-called mergers under the above quoted acts, which petitioner in its brief calls "short form of merger," amounted in effect to a sale by the subsidiary of its assets to the parent corporation. In fact in each of the exhibits attached to the stipulation, showing details of the merger of Cumberland Valley Light & Power Co., York Haven Water & Power Co., Hanover Power Co., and Pennsylvania Edison Co. with the Metropolitan Edison Co., petitioner, the transaction is referred to as a sale of assets by the subsidiary to the parent corporation. For example, in the application for approval by the Public Service Commission of the Commonwealth of Pennsylvania of the transfer of assets by the York Haven Water & Power
78 Co. to the Metropolitan Edison Co., the proceeding is captioned as follows: "In the Matter of the application of York Haven Water and Power Company and Metropolitan Edison Company under Section 3 (c) Article III and Sections 18 and 19, Article V of the Public Service Company Law, for the approval of the sale of the property and franchises of the former to the latter Company." A careful inspection of each of the exhibits which show the details of the transfer of assets by the four above named corporations to the Metropolitan Edison Co. convinces us that the transactions were essentially liquidations of those companies in consideration of the surrender and cancellation of all their capital stock which was held by petitioner and the assumption of all their liabilities by the petitioner.

In such a situation the same rule applies as we applied in IV above, relating to the bonds of Metropolitan Power Co. On the strength of the authorities there cited, we hold against petitioner on the issue of deduction of unamortized discount and expense on the redemption of the bonds of the Cumberland Valley Light & Power Co., York Haven Water & Power Co., Hanover Power Co., and Pennsylvania Edison Co.

VI

Unamortized discount and expense bonds assumed by petitioner in consolidation of three corporations to form petitioner.—On August 6, 1917, the following corporations were consolidated to form the Metropolitan Edison Co. (petitioner): Metropolitan Electric Co., Edison Electric Illuminating Co. of Lebanon, Pennsylvania, and Lebanon Valley Electric Light Co. This consolidation took place under the Act of May 3, 1909, P. L. 408, section 1, Laws of the State of Pennsylvania. See paragraph 13 of the stipulation.

Section 5750 of the Pennsylvania Statutes, which amends the act of May 3, 1909, reads as follows:
79 "SEC. 5750. Effect of merger; new patent bonus; certificate of reports and payment of taxes.—Upon the filing of said

certificates and agreement, or copy of the agreement, in the o
of the Secretary of the Commonwealth, and upon the issuing of
letters patent thereon by the Governor, the said merger shall
deemed to have taken place, and the said corporations to be
corporation under the name adopted in and by said agreem
possessing all the rights, privileges, and franchises theretofore ve
in each of them; and all the estate and property, real and perso
and rights of action, of each of said corporations, shall be dee
and taken to be transferred to and vested in the said new corporati
without any further act or deed: Provided, That all rights of cr
itors and all liens upon the property of each of said corporati
shall continue unimpaired, limited in lien to the property affec
by such liens at the time of the creation of the same, and the resp
tive constituent corporations may be deemed to be in existence
preserve the same; and all debts not of record, duties, and liabili
of each of said constituent corporations shall thenceforth attach
the said new corporation, and may be enforced against it to the sa
extent and by the same process as if said debts, duties, and liabili
had been contracted by it. But such merger and consolidation sh
not be complete, and no such consolidated corporation shall do a
business of any kind, until it shall have first obtained from
Governor of the Commonwealth new letters patent, and shall ha
paid to the State Treasurer a bonus, as prescribed by law, upon
its capital stock in excess of the amount of capital stock of t
several corporations so consolidating, upon which the bonus requi
by law has been theretofore paid: And provided further, That n
letters patent of such consolidated corporation shall not be issued
the Governor of the Commonwealth, until each corporation enteri
into and forming the consolidated corporation shall have filed w
the Secretary of the Commonwealth a certificate from the Audit
General of the Commonwealth, setting forth that all reports requi
by the Auditor General of the Commonwealth have been du
80 filed to the date of the proposed merger, and that all taxes d
the Commonwealth of Pennsylvania have been paid, up to a
including said date." (1915, April 20; P. L. 205, sec. 1.)

The agreement of merger is set out in full in Exhibit J of t
stipulation and bears the caption, "Agreement of Consolidation a
merger by and between Metropolitan Electric Company, The Edis
Electric Illuminating Company of Lebanon, Pa., and Lebanon Vall
Electric Light Company Forming Metropolitan Edison Company
The agreement to merge and consolidate is a lengthy document a
it is believed unnecessary to set it out in full here. Suffice it to s
it appears to follow and comply with the Pennsylvania Act of M
3, 1909, as amended, relating to mergers and consolidation of Pen
sylvania corporations.

We are of the opinion that the merger and consolidation of t
three named corporations to form the petitioner—Metropolitan Ed
son Co.—was substantially the same as the mergers involved
Connecticut Electric Service Co., 35 B. T. A. 444. In that case

upheld the contention of the taxpayer that the corporation, which assumed and agreed to pay the bonds of its merged subsidiary as a part of the plan of the merger, was entitled to succeed to the right to deduct unamortized discount of the bond issue of the subsidiaries. In ruling upon this point, we said:

"Three courts and this Board have now spoken on the right of a corporation resulting from a statutory merger to deduct bond discount on bonds issued by a constituent corporation, and they have all reached the same result in allowing such deduction. The Circuit Court of Appeals for the Fourth Circuit, in Western Maryland Ry. Co. v. Commissioner, 33 Fed. (2d) 695; the Circuit Court of Appeals for the Second Circuit, in New York Central R. R. Co. v. Commissioner, 79 Fed. (2d) 247, and American Gas & Electric Co. v. Commissioner, 85 Fed. (2d) 527; the Court of Claims, in American
81 Gas & Electric Co. v. Commissioner, — Fed. Supp. — (Dec. 7, 1936); and this Board in Illinois Power & Light Corporation v. Commissioner, 33 B. T. A. 1189, all allowed the deduction where the consolidation or merger was effected pursuant to the provisions of state statutes." Turner-Farber-Love Co. v. Commissioner, 68 Fed. (2d) 416, did not involve a statutory merger.

On the strength of Connecticut Electric Service Co., supra, and cases there cited, we hold that petitioner is entitled to deduct $17,383.28 unamortized debt discount and expenses upon retirement in 1928 of bonds of the Metropolitan Electric Co. We do not regard this holding as being in conflict with Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Commissioner, 75 Fed. (2d) 719. That case involved the right of a consolidated corporation resulting from the merger and consolidation of two other Pennsylvania corporations to bring forward the statutory net loss of one of the merging corporations incurred in the period prior to the merger and use it as a deduction from the income of the corporation resulting from the consolidation. The court denied the right claimed, citing as authority New Colonial Ice Co. v. Helvering, 292 U. S. 435.

We have here no question of the right to carry forward and use as a deduction a statutory net loss. If the same rule that governs the carrying forward of statutory net losses applies to unamortized discount on bonds, then our decision in Connecticut Electric Service Co., supra, was wrong and so would be all the cases cited in that report in support of the conclusion there reached. We do not think the rule applicable to the carrying forward of statutory net losses is applicable here.

Reviewed by the Board.

Decision will be entered under Rule 50.

82 STERNHAGEN, dissenting: It seems to me that the decision in subdivision VI, allowing the deduction of $17,383.28 unamortized discount and expense upon the retirement in 1928 of the bonds of the Metropolitan Electric Co., is contrary to Turner-Farber Love Co. v. Commissioner, 68 Fed. (2d) 416; American Gas & Elec-

tric Co. v. Commissioner, 85 Fed. (2d) 527. The petitioner is, under Pennsylvania law, "an entity entirely distinct from that of its constituents," and as the result of merger or consolidation, the constituent corporations "are deemed dissolved" and "cease to exist." Pennsylvania Co. for Insurances, etc., v. Commissioner, 75 Fed. (2d) 719. In this important respect the situation is different from a consolidation in Connecticut, and Connecticut Electric Service Co., 35 B. T. A. 444, is not controlling. There the Board said that "the law of Connecticut is particularly clear in providing that the constituent corporations in the case of a merger or consolidation continue their existence in the corporations into which they are merged and consolidated."

MURDOCK agrees with this dissent.

SMITH, dissenting: I am of the opinion that the petitioner is entitled to deduct from the gross income of the taxable years the amounts which have been disallowed in the prevailing opinion of the Board as deductions for unamortized bond discount and expense. The petitioner took over its subsidiaries under mergers of the petitioner with its subsidiaries. It took over the assets of its subsidiaries at the actual costs to the subsidiaries. If the petitioner is not entitled to deduct the unamortized bond discount and expense upon the bonds redeemed in the taxable years it will never get deductions for the unamortized bond discount and expense upon the bond
83 issues of the subsidiaries. In my opinion such a result is not responsive to the legislative intent. See Western Maryland Ry. Co. v. Commissioner, 33 Fed. (2d) 695; New York Central R. Co. v. Commissioner, 79 Fed. (2d) 247.

MORRIS, dissenting: I dissent from that part of the opinion which is inconsistent with the Coast Counties Gas & Electric Co., 33 B. T. A. 1199, for the reasons given in that opinion in support of the conclusion therein.

Before United States Board of Tax Appeals

Decision

Entered July 2, 1937

Pursuant to the findings of fact and opinion of the Board promulgated May 14, 1937, and motion filed by respondent on June 30, 1937, together with a notice of settlement agreed thereto by petitioner, now, therefore, it is

Ordered and decided that there are deficiencies in income tax for the years 1927 and 1928 in the respective amounts of $21,657.13 and $78,620.55.

(Sgd.) EUGENE BLACK, *Member.*

84 In United States Circuit Court of Appeals for the Third Circuit

[Title omitted.]

Petition to review decision of the United States Board of Tax Appeals

Filed September 29, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

Now comes the petitioner, Metropolitan Edison Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as the petitioner) by its undersigned attorneys, and respectively shows to the Court as follows:

I. Jurisdiction for Review

This is a proceeding for review by the United States Circuit Court of Appeals for the Third Circuit of so much of the decision of the United States Board of Tax Appeals, entered on the second day of July 1937, Docket No. 57869 (affirming in part and redetermining the deficiencies in income tax theretofore determined by the Commissioner of Internal Revenue (hereinafter referred to as the
85 Commissioner) for the calendar years 1927 and 1928 (as determines that there are deficiencies in income tax for said years 1927 and 1928.

The petitioner is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at the City of Reading in said Commonwealth.

The Commissioner, the respondent on review, is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States of America.

The petitioner filed its income-tax returns for the calendar years 1927 and 1928, respectively, with the Collector of Internal Revenue for the first district of Pennsylvania at Philadelphia, Pennsylvania, which is within the judicial circuit of the United States Circuit Court of Appeals for the Third Circuit, in which court review of the said decision of the Board of Tax Appeals is sought by the petitioner.

II. The Nature of the Controversy

On March 11, 1931, the Commissioner mailed to the petitioner a notice of deficiency in income tax for the calendar years 1927 and 1928 in the amounts of $249,422.80 and $407,285.21, respectively. Thereafter, the petitioner duly filed its petition for the redetermination of the said asserted deficiencies with the United States Board of Tax Appeals (hereinafter referred to as the Board). The Com-

missioner duly filed his answer to the said petition and trial was
on the issues raised by said petition and answer. On May 14,
the Board promulgated its report and opinion and on the second
of July 1937, entered its final decision redetermining the deficie
in the amount of $21,657.13 for the calendar year 1937, and in
amount of $78,620.55 for the calendar year 1938.

86 III. The Matters in Controversy

The facts are contained in a stipulation (recited in full in
Board's opinion and adopted as its findings of fact) and cer
exhibits annexed thereto. The sole matters for decision in the
troversy are whether the petitioner is entitled to deductions
respect to unamortized discount and expense (a) applicable to b
of Metropolitan Power Company, a former subsidiary of the
tioner, which were assumed by it upon a transfer of the assets of
Metropolitan Power Company to it and which were subsequently
deemed and retired by the petitioner, and (b) applicable to bond
three former subsidiaries of the petitioner whose assets were tr
ferred to it pursuant to the provisions of the so-called "short for
merger" statute of Pennsylvania, which bonds were subseque
redeemed and retired by the petitioner.

(a) In 1923 Metropolitan Power Company was organized
wholly owned subsidiary of the petitioner for the purpose of buil
and operating an electric generating station and of raising a l
part of the necessary construction funds through a first mort
thereon. It had no public franchises and sold all of the power
erated to the petitioner for an amount sufficient to carry opera
expenses and fixed charges, particularly on the debt, the disco
and expense of which are herein involved upon appeal. After
organization of the Power Company the petitioner purchased al
its stock, loaned it $3,000,000 on open account, and purchased at
guaranteed, endorsed and sold to the public at 90 all of its $3,250
principal amount of first mortgage bonds. In 1927, pursuant
certificate of the Pennsylvania Public Service Commission, all of
assets of the Power Company were transferred to the petition
books, the operating deficit was charged against petition
87 surplus, the stock was surrendered for cancellation, the
account of $3,000,000 was cancelled, and the bonds were
sumed by petitioner. Thereafter, during 1927, all of these bonds
retired by petitioner, and there remained unamortized $308,067.9
debt discount and expense incurred on their issuance.

First, that the unamortized discount and expense upon the re
ment of said bonds by your petitioner is a proper deduction in c
puting petitioner's income, because of the identity and relations
between your petitioner and its said affiliated subsidiary, Metrop
tan Power Company, as a matter of fact and consequence of law.

Second, that under the foregoing facts the Power Company
a mere department or instrumentality of the petitioner, and that

bonds were at all times in substance and reality the bonds of the petitioner, as they were in fact its obligations.

Third, that the Commissioner should have applied the provisions of Section 240 of the Revenue Act of 1926 by allocating the deductions for unamortized discount and expense to the petitioner in order accurately to distribute such deductions.

(b) In 1928, the petitioner called and retired certain bonds of Cumberland Valley Light & Power Co., York Haven Water & Power Co., Hanover Power Co., and Pennsylvania Edison Co., which had theretofore been assumed by petitioner by merger under the laws of Pennsylvania. The franchises and assets of these companies had been acquired by petitioner pursuant to the provisions of the Acts of the Pennsylvania General Assembly of April 29, 1874, and April 17, 1876. The Board held that such so-called mergers amounted
88 in effect to sales of assets, and therefore that the unamortized discount and expense applicable to said bonds was not deductible.

It is the contention of the petitioner:

First, that the unamortized discount and expense upon the retirement of said bonds by your petitioner is a proper deduction in computing petitioner's income, because of the identity and relationship between your petitioner and its said affiliated subsidiaries, Cumberland Valley Light and Power Company, Metropolitan Electric Company, York Haven Power Company, Hanover Power Company, and Pennsylvania Edison Company, as a matter of law.

Second, that a transfer of assets pursuant to the aforementioned Acts of Pennsylvania General Assembly is in fact and in law a statutory merger.

Third, that the petitioner became entitled as the result of the statutory merger to deduct the unamortized discount and expenses on the retired bonds.

Fourth, that even if such transfer is not a statutory merger, the acquisition and assumption are such as to make the acquiring corporation a continuation of the transferring corporation with respect to the latter's corporate franchise and liabilities, and therefore that the deduction is proper.

IV. Assignment of Errors

The petitioner respectfully submits that in the decision and order of the Board redetermining the said deficiencies manifest error occurred and intervened to the prejudice of the petitioner, and, as the basis for its petition for review, assigns as errors:

(1) The failure of the Board to allow petitioner a deduction for its gross income for the calendar year 1927 for the unamortized
89 discount and expense applicable to the bonds of Metropolitan Power Company retired by petitioner during said year;

(2) The failure of the Board to allow petitioner a deduction from its gross income for the calendar year 1928 for the unamortized dis-

count and expense applicable to the bonds of Cumberland Valley Light & Power Company, York Haven Water & Power Company, Hanover Power Company, Metropolitan Electric Company and Pennsylvania Edison Company retired by petitioner during said year; and

(3) The finding by the Board that there was any deficiency for either of the calendar years 1927 or 1928; and

(4) The failure of the Board to find that petitioner had overpaid its income taxes for the periods stated.

Wherefore, your petitioner prays that this Honorable Court may review the decision of the United States Board of Tax Appeals and reverse and set aside the same, or modify the same, or grant such other relief as justice may require, and that the clerk of the said United States Board of Tax Appeals be directed to transfer and deliver to the clerk of this court certified copies of all and every of the documents necessary and material to the presentation and consideration of this petition for review; all as required by the rules of this Court and the statutes made and provided.

And your petitioner will every pray.

METROPOLITAN EDISON COMPANY.
By FRANCIS J. SWEENEY.
WALTER BIDDLE SAUL,
C. M. TRAMMELL,
BRADFORD S. MAGILL.

90 [*Duly sworn to by Charles M. Trammell; jurat omitted in printing.*]

91 Before United States Board of Tax Appeals

Notice of filing petition for review

Filed September 29, 1937

To the General Counsel for the Treasury Department:

You are hereby notified that on the twenty-ninth day of September 1937 the petitioner, the Metropolitan Edison Company, did file with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Third Circuit of the decision of the Board of Tax Appeals heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error, as filed, is attached hereto and served upon you.

Dated this twenty-ninth day of September A. D. 1937.

FRANCIS J. SWEENEY.
WALTER BIDDLE SAUL.
C. M. TRAMMELL.
BRADFORD S. MAGILL.
Attorneys for Metropolitan Edison Company.

Copy of the foregoing notice, together with copy of the petition for review, is received and service thereof is hereby accepted this twenty-ninth day of September A. D. 1937.

J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

92 Before United States Board of Tax Appeals

Praecipe for record

Filed September 29, 1937

To the Clerk of the United States Board of Tax Appeals:

You will please prepare within sixty (60) days from the date of the filing of the petition for review in the above-entitled case, transmit, and deliver to the clerk of the United States Circuit Court of Appeals for the Third Circuit copies, duly certified as correct, of the following documents:

1. Prepare docket entries of proceedings before the Board of Tax Appeals.
2. Pleadings before the Board, including copy of notice of deficiency attached to petition.
3. Findings of fact, opinion, and decision of the Board.
4. Petition for review and assignments of error, together with proof of service of notice of filing petition for review and assignments of error.
5. This praecipe.

C. M. TRAMMELL,
Attorney for Petitioner.

Service of a copy of the within praecipe is hereby admitted this twenty-ninth day of September 1937.

J. P. WENCHEL,
Attorney for Respondent on Review.

93 [Clerk's certificate to foregoing transcript omitted in printing.]

94 In United States Circuit Court of Appeals for the Third Circuit

[Title omitted.]

Minute entry of argument

And afterwards, to wit, the 8th day of April 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable J. Warren Davis, and Honorable John Biggs, Jr., Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 23d day of August 1938, come th parties aforesaid by their counsel aforesaid, and the Court, no being fully advised in the premises, renders the following decision

95 In United States Circuit Court of Appeals for the Third Circu

No. 6612. March Term, 1938

METROPOLITAN EDISON COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Petition for Review From the United States Board of Tax Appeal

Opinion

Filed August 23, 1938

Before BUFFINGTON, DAVIS, and BIGGS, Circuit Judges.

DAVIS, Circuit Judge. This is an appeal from an order of rede termination, entered by the Board of Tax Appeals, holding that th petitioner is liable for deficiencies of $21,620.55 and $78,620.55 in it income tax returns for 1927 and 1928, respectively,

In determining these deficiencies, the Board upheld the contention of the commissioner that certain deductions claimed by the petitioner for the years in question, were not allowable. There were other issues involved before the Board which were determined in favor of the petitioner (35 B. T. A. 1110), but as the commissioner did not appeal, we are not concerned with them here.

96 In 1927 and 1928 after having absorbed certain of its subsidiaries, the petitioner redeemed for cash bonds previously issued by them and in its income tax returns for those years deducted the unamortized discount and expenses connected with the issuance of these bonds. The question is whether or not the petitioner had the right to make these deductions.

If the transactions by which the petitioner absorbed these subsidiaries constituted a true merger under the law of Pennsylvania, then the petitioner was entitled to the deductions claimed, but if they were sales and not mergers, then the Board correctly disallowed them.

The facts upon which the petitioner bases its claims for deductions are similar for both years, but we think that the opinion will be clearer if we take up those for 1928 first.

I. Deductions for 1928

In or prior to 1928 the petitioner absorbed four of its subsidiary corporations, the Cumberland Valley Light & Power Co., the York Haven Water & Power Co., the Hanover Power Co., and the Pennsyl-

vania Edison Co. These companies transferred all of their franchises and assets to the petitioner, which thereupon assumed all of their debts and returned to them for cancellation all of their capital stock. This was done in accordance with the provisions of the "short form merger statute," Purdons Pennsylvania Statutes, Title 15, Section 595, under whose provisions the subsidiaries ceased to exist. The petitioner then, in 1928, redeemed for cash, the bonds which these companies had previously issued totalling $11,142,900 and also paid premiums on them amounting to $645,251.34. When these bonds were redeemed there remained unamortized discount and issu-
97 ing expenses amounting to $769,864.54. In its income tax return for that year, 1928, the petitioner claimed deductions for the premiums paid and the unamortized discount and expenses. The commissioner disallowed both deductions. On appeal to the Board, the deduction for premiums was allowed, but the deduction for unamortized discount and expenses was not allowed.

It is clear that the deduction would have been allowed if the petitioner, itself, had issued the bonds, Article 545 of Regulations 69; Article 68 of Regulations 74; Helvering v. Union Pacific Co., 293 U. S. 282; point I of the Board's opinion in this case, 35 B. T. A. 1117, or if it had advanced the money to the subsidiaries to redeem the bonds, and had thereafter filed a consolidated income tax return with them, Point II of the Board's opinion in this case, 35 B. T. A. 1117, 1118.

The "short form merger statute," which the petitioner followed in absorbing these subsidiaries, provides, in part, that any corporation, with the consent of its stock holders, is entitled to "sell, assign, dispose of, and convey to any corporation created under or accepting the provisions of the act, its franchises, and all its property, real, personal, and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing * * *."

In disallowing the deduction, the Board placed great stress on the words "sell" and "purchasing" contained in the statute, and also upon the use of similar words in the agreements attending the transactions, but these particular words are not decisive of the issue, for "whether a particular transaction is in reality a sale, conversion, consolidation, or merger, to a great extent depends upon the circumstances surrounding each particular case; and in determining
98 the question all elements of the transaction must be considered. There is no magic in the words applied to the transaction. Calling it a consolidation does not make it so, and giving it another name does not prevent it from being a consolidation" 14 (a) C. J. 1056; 15 Fletcher Cyclopedia Corporations, Sec. 7043.

The transactions by which the companies mentioned above were absorbed contained the following elements: (1) the subsidiary corporations transferred all of their franchises and assets to the petitioner in consideration for the assumption of their debts and return and

cancellation of all their capital stock; (2) the subsidiaries, by operation of law, thereupon ceased to exist; (3) the petitioner, an existing corporation before the alleged merger, continued to exist thereafter; and (4) the petitioner became liable for the debts of the absorbed subsidiaries both under the contract and by operation of law. 14(a) C. J. 1056 and 1072; 15 Fletcher Cyclopedia Corporations, Sec. 7121; 15 A. L. R. 1112; 30 A. L. R. 558; 39 A. L. R. 143; Montgomery Web Co. v. Dienelt, 133 Pa. 585; 19 Atl. 428; Maxler v. Freeport Bank, 275 Pa. 510; 119 Atl. 592; In re Buist's Estate, 297 Pa. 537; 147 Atl. 606; Kulka v. Nemirovsky, 321 Pa. 234; 182 Atl. 692; Commonwealth v. Merchants National Bank of Allentown, 323 Pa. 145; 185 Atl. 823; In re Harr, 323 Pa. 380; 186 Atl. 120.

These elements comprise all of the essential characteristics of a true merger, which is defined as the union "of two or more corporations by the transfer of property of all to one of them, which continues in existence, the others being swallowed up or merged therein. In regard to the survivorship of one of the constituent corporations, it differs from a 'consolidation' wherein all of the consolidating companies surrender their separate existence and become parts of a new corporation." Black's Law Dictionary, 2nd Ed.; Words & Phrases, 1904 Ed.; 14(a) C. J. 1054 et seq.; 15 Fletcher Cyclopedia Corporations, section 7041; Cortland Specialty Co. v. Commissioner, 60 Fed. (2d) 937 (C. C. A. 2).

In the recent case of General Gas and Electric Corp. v. Commissioner, Fed. (2d) (C. C. A. 2), decided July 18, 1938, the court was of the opinion that, since the "short form merger statute" contained no specific provision that the absorbing corporation became liable for the debts of the absorbed company, it, apart from contract, became "liable only on principles of fraudulent conveyance and to the extent of the assets received." It is true that in Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517; 156 Atl. 150, the only case cited on this point, the Supreme Court of Pennsylvania indicated that the absorbing corporation might possibly be held liable for the debts of the merged corporation on that principle. The Courts of Pennsylvania, however, have never held that the procedure under this Act did not result in a merger, but have often referred to it as a merger. Pennsylvania Utilities Co. v. Public Service Com., 89 Pa. Super. 612; Hey v. Springfield Water Co., 207 Pa. 38; 56 Atl. 265, 268; York Haven Water & Power Co. v. Public Service Com., 287 Pa. 241; 134 Atl. 419, 421; Commonwealth v. Huntington Gas Co., 11 Dist. 546; 26 Pa. C. C. 657. This carries the implication that independently of the law of fraudulent conveyances the absorbing corporation is liable for the debts of the absorbed corporation. Commonwealth v. Merchants National Bank of Allentown, supra.

The "short form merger statute" of 1876, as amended was the only statute until the passage of the Corporation Laws of 1933, which provided a method for a true merger. The so-called "long form merger statute" (Purdon's Pennsylvania Statutes, Title 15, sec-

100 tions 421, 422 and 423) provided only for consolidation. It expressly required the formation of a new corporation to take over the assets of the merged corporations. Pennsylvania Co. etc. v. Commissioner 75 Fed. (2d) 719, 721 (C. C. A. 3).

In the case of General Gas & Electric, supra, it was pointed out that, for the purposes of actions pending against it, an absorbed corporation continues to exist. Merwine v. Mt. Pocono Light & Improvement Co. supra. But we have not found any cases which hold that the absorbed corporation under the "long form merger statute" does not also continue to exist for that purpose, and the language used in section 423 indicates that it does so continue to exist. Both the short and the long form statute are equally explicit in providing that the absorbed corporation ceases to exist. It would, therefore, appear that the effect of a merger under both statutes is the same in this respect.

The fact that the word "sale" is used in the "short form merger statute" is not of itself conclusive, for a sale may be one of the steps of a merger. 8 Thompson on Corporations (3rd Ed.), section 6013; Chicago S. F. & Calif. R. Co. v. Ashling, 160 Ill. 373, 380, 381; 43 N. E. 373, 375; Continental Trust Co. v. Toledo St. L. & K. C. R. Co., 82 Fed. 642 (C. C. A. 7). Clearly the transactions here involved do not constitute a true sale, for that implies a transfer of property for consideration in money. Blacks Law Dictionary (2d ed.); Cortland Specialty Co. v. Commissioner, supra. If the concepts of barter and exchange are included in the word "sale," it would be difficult to find any merger which did not contain some; if not all, of the elements of a sale. In every case of merger which we have been able to discover, the absorbing corporation, in return for the assets of a merged corporation, gave some consideration either to the merged company, its stockholders or its nominees. If this be considered a "sale" then practically every merger is a sale.

101 We are convinced that the transactions, by means of which the petitioner absorbed the subsidiaries here involved, partook of all of the essential elements of a merger (Chicago, S. F. & C. Ry. Co. v. Ashling, supra), and that the petitioner is entitled to the deduction claimed for 1928. American Gas & Elec. Co. v. Commissioner, 85 Fed. (2d) 527 (C. C. A. 2); New York Cent. R. Co. v. Commissioner, 79 Fed. (2d) 247 (C. C. A. 2); cert. den. 296 U. S. 653; Western Maryland Ry. Co. v. Commissioner, 33 Fed. (2d) 695 (C. C. A. 4); American Gas & Elec. Co. v. U. S., 17 Fed. Supp. 151 (Ct. Cls.).

II. Deduction for 1927

In 1923, the petitioner formed the Metropolitan Power Company, hereinafter called the Power Company, for the purpose of building and operating a large electric generating station on the Susquehanna River in Dauphin County, Pennsylvania. The petitioner purchased all of its capital stock, loaned it $3,000,000, guaranteed its bond issue of $3,250,000 and purchased all of its power. As the Board found, the

petitioner with the exception of the bondholders, was its sole creditor. The reason for creating the Power Company was to secure the bond issue by a first mortgage on the plant. It had no public franchises.

In 1927, after having obtained the permission of the Public Service Commission of Pennsylvania, the Power Company transferred all of its assets to the petitioner and in return the petitioner surrendered all of the capital stock of the Power Company for cancellation, cancelled the indebtedness of $3,000,000 and assumed all of its liabilities.

This procedure, technically, was not within the provisions of any merger statute, but there is no question as to its legality. The
102 reason given for not following the provisions of the "short form merger statute" was that the Power Company possessed no public franchises. 35 B. T. A. 1113 (finding of fact No. 3). However, this procedure in form and effect is practically and substantially that which the "short form statute" prescribes.

After having absorbed the Power Company, the petitioner, in 1927, redeemed for cash the bonds previously issued by the Power Company totaling $3,250,000. It paid premiums on these bonds amounting to $243,645 and there existed unamortized discount and expenses totaling $308,097.90. In its income tax return for 1927, the petitioner claimed deductions for both the amount of the premiums paid and the unamortized discount and expenses. The Board allowed the former but disallowed the latter deduction.

The same question as was involved in the deduction for 1928 is also here involved, and that is whether or not the transaction of absorption was a merger.

The analysis of this transaction shows: (1) that the Power Company transferred all of its assets to the petitioner; (2) that the petitioner was an existing corporation and continued to exist; (3) that the Power Company, though it did not automatically cease to exist upon the completion of the transaction, did discontinue all operations and was left without stockholders or property of any sort, and (4) that the petitioner, both by contract and operation of law, became liable for the debts of the Power Company. 14 C. J. 970; 15 Fletcher Cyclopedia Corporations, section 7127; In re Harr, supra; In re Buist's Estate, supra; Commonwealth v. Merchants Nat. Bank of Allentown, supra.

The only difference between the above procedure and that followed by the petitioner under the "short form merger statute" with reference
103 to the 1928 deduction was that the Power Company continued to exist nominally, while the Cumberland, York-Haven, Hanover and Pennsylvania Edison Companies automatically under the statute ceased to exist except as noted above. This was a mere technical, and not a practical or substantial difference, and should not determine the rights of the parties. Moreover, the transfer by the Power Company of all of its assets and cancellation of all of its stock effected its de facto dissolution (14 (a) C. J. 1117; Lauman v. Lebanon Valley R Co., 30 Pa. 42; Reynolds v. Cridge, 1 Dist. 693; 11 Pa. C. C. 306; Commonwealth v. Altoona & P. C. R. Co., 32 Pa.

C. C. 449; Skirvin Operating Co. v. Southwestern Electric Co., 174 Pac. 1069, 15 A. L. R. 1104, 1110), and its formal dissolution in January 1928 was only a declaration of that fact. 14 (a) C. J. 1118.

It follows that the petitioner was also entitled to the deduction for 1927 and the order of redetermination of the Board must be set aside and the case remanded to it with directions to proceed to redetermine the tax of the petitioner in accordance with this opinion.

A true Copy:
Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

104 In United States Circuit Court of Appeals for the Third Circuit

No. 6612. March Term, 1938

METROPOLITAN EDISON COMPANY, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Judgment

Filed August 23, 1938

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be, and the same is hereby reversed, with directions to the said Board of Tax Appeals to redetermine the tax of the petitioner in accordance with the opinion of this Court.

Philadelphia, August 23, 1938.

J. WARREN DAVIS,
Circuit Judge.

[File endorsement omitted.]

105 [Clerk's certificate to foregoing transcript omitted in printing.]

106 Supreme Court of the United States

Order allowing certiorari

Filed January 3, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1939